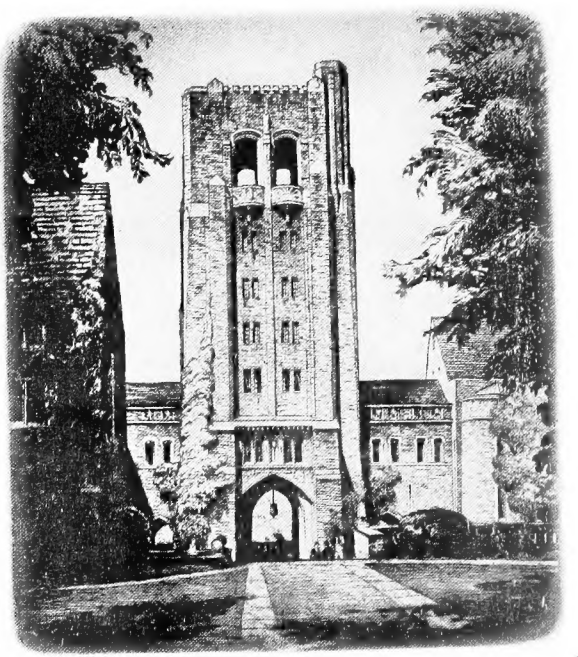


Cornell Law School Library

Cornell University Library
KF 1526.S65
The equitable remedies of creditors in r
3 1924 019 308 695
law



The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

http://www.archive.org/details/cu31924019308695

THE

EQUITABLE REMEDIES

OF

CREDITORS

IN RELATION TO

FRAUDULENT CONVEYANCES, TRANSFERS, MORTGAGES, JUDGMENTS AND ASSIGNMENTS

INCLUDING

CREDITORS' BILLS, BILLS IN THE NATURE OF CREDITORS' BILLS, SUPPLEMENTARY PROCEEDINGS, PROCEEDINGS IN AID, PROCEEDINGS AGAINST INSOLVENT CORPORATIONS, INSOLVENT ESTATES, TRUSTS, RECEIVERSHIP

AND

THE EFFECT OF THE BANKRUPT ACT UPON

INSOLVENT LAWS, ASSIGNMENT LAWS

AND THE EQUITABLE REMEDIES OF

CREDITORS

BY

JOHN W. SMITH, LL.D.

OF THE CHICAGO BAR

CHICAGO
CALLAGHAN & CO.
1899

L-A7160

Entered according to Act of Congress, in the year 1899,
By CALLAGHAN & COMPANY,
In the office of the Librarian of Congress, at Washington, D. C.

KF
1526
565

PREFACE.

There is no other branch of the law that better illustrates the general growth of remedial jurisprudence and the adaptation of remedies to the ever changing conditions and new exigencies in human affairs than the equitable rights and remedies of creditors herein considered. As originally administered, the law of creditors' bills as a remedial action was confined almost exclusively to relief against fraudulent conveyances of real estate. With the general growth of chancery jurisdiction the equitable remedies of creditors have been extended to cover almost every conceivable transaction of the debtor involving the rights of creditors where, through the medium of the common law courts, an adequate and complete remedy was not afforded. For want of a better designation many of these equitable proceedings have been termed bills in the nature of creditors' bills, but they have been in theory, and in fact, but the adaptation and application of an older, well known and efficacious remedy to new conditions. This extension of this branch of the law has not been confined to the courts alone, but is also to be found in the expressed legislative policy of the several states, but more particularly in regard to insolvent corporations, the winding up of their affairs and the distribution of their assets among creditors and stockholders, and even extending in many cases to the dissolution of the corporation and the forfeiture of its franchises.

This is the first attempt, so far as the author is aware, in the preparation of a distinctive work upon this sub-

ject, but it is believed there is a necessity and public demand therefor.

In the preparation of this work it has been the purpose of the writer to fairly and impartially state the law upon the subject in as clear and concise language as possible, and at the same time analyze and separate the distinctive features of each topic, showing the relationship of each to the general subject. The general rules upon each branch of the subject which are sustained, at least, by the weight of authority, are given in as explicit terms as possible, and at the same time and in the same connection the exceptions and modifications, rendered necessary by the qualifying facts and circumstances, are given, which to the practitioner are as important as the rules themselves. As will be observed, the chapter contents at the beginning of each chapter are unusually extended. The purpose of this is to facilitate the finding of any desired point and the authorities sustaining it without being required to read the entire chapter or section even. The notes in some instances are apparently out of proportion to the text, but on examination it will be observed that the intention in so doing has been to more fully state the reasons and underlying principles of the text, to amplify the statement of facts, as an aid to those not having access to the reported cases, and to give all the cases of importance touching the principles of the text. In the text there are, designedly, no discussions of isolated cases with their accompanying facts, more or less complicated, thus rendering it compact, and, purposely, less voluminous.

The chapter on Receivership has been prepared with reference to the well recognized growing importance of that subject in connection with the equitable remedies here treated. The cases cited are mainly receivership cases in equitable proceedings involving the rights of

creditors, and it is believed include all reported cases down to July 1, 1899, more than a thousand of which are not to be found in any other general work on receivership.

The chapter on the Effects of the Bankrupt Act of 1898 upon the equitable remedies of creditors is exhaustive and is designed to include all reported cases down to Sept. 1, 1899, where the equitable rights and remedies of creditors are involved. Reference has been made frequently to the bankrupt act of 1867, and the decisions thereunder when the provisions of the present act are illustrated thereby. The effect of the bankrupt act upon state insolvent laws, and proceedings based thereon, the distinctions between insolvent and assignment laws, the exclusive jurisdiction of federal courts, the concurrent jurisdiction of federal and state courts, the equitable remedies of creditors in state courts unaffected by the bankrupt act, the rights and remedies of creditors in the bankrupt court, the scope and powers of the trustee as the representative of creditors, are as fully treated as the adjudicated cases thus far reported will permit.

If we have succeeded in stating the principles of law governing the equitable remedies of creditors concisely and in a logical manner so as to be serviceable to the practitioner and the court, and in some degree have been successful in gathering up from the thousands of adjudicated cases the equitable principles governing this subject and arranging them so as to form a compact part of the general subject of equitable jurisprudence the purpose in view will have been realized by

THE AUTHOR.

Chicago, October, 1899.

TABLE OF CONTENTS.

(References are to Sections and Pages.)

CHAPTER I.

Sections. Pages.

GENERAL SCOPE OF EQUITABLE REMEDIES. 1-54

1. Introductory.
2. Creditors' bills defined.
3. Equitable jurisdiction—Grounds of.
4. Classification of creditors' bills.
5-12. Fraudulent conveyances.
13. Exhaustion of legal remedies—Meaning.
14. Judgment—When not required.
15. Corporations—Fraudulent acts of.
16. Creditors' bills—When sustained.
17. Creditors' bills—When not sustained.
18. May reach real and personal property.
19. When pendency of suit not a bar.
20. Amount due on judgment immaterial.
21. Holder of security not barred.
22. Property applied according to equitable methods.
23. Money paid on rescinded contract recoverable.
24. Right of recovery depends on debtor's rights.
25. Equitable assets—Power of court over.
26. Evidence, sufficiency of—Declarations of vendor.
27. Injunctions not granted to general creditor.
28. Good faith required.
29. Creditors' remedies against insolvent corporations.

CHAPTER II.

JURISDICTION. 56-75

35. Jurisdiction defined—Of person and subject matter.
36. Jurisdiction—Territorial.
37. Jurisdiction—Statutory.
38. General rule—Residence of the grantee.
39. Co-ordinate jurisdiction in law and equity.

Sections. Pages.

40. Jurisdiction of United States circuit court.
41. Jurisdiction—Basis of, under creditors' bills.
42. Jurisdictional facts to be alleged.
43. Jurisdiction as between courts.
44. Exhaustion of legal remedies not alone sufficient.
45. Equitable jurisdiction in case of fraud, general.
46. Jurisdiction for one purpose jurisdiction for all.
47. Concurrent jurisdiction—Fraudulent conveyances.
48. Equity jurisdiction—Advantages of.
49. Equity jurisdiction—Scope of.
50. Legal remedy must be exhausted.
51. Jurisdiction to reach fraudulent incumbrance in another county.

CHAPTER III.

PARTIES TO THE SUIT. 76-117

60. Necessary parties—General principles.
61. All parties in interest must be parties.
62. Where fraudulent conveyance is attacked.
63. Proceedings against corporations, corporation necessary. Proceedings against corporations, stockholders when and when not.
64. Joint judgment debtors and joint debtors.
65. General rule and illustrations of necessary parties.
66. Want of parties, how and when raised.
67. When and who are not necessary parties.
68. Who may bring suit—Plaintiff.
69. For whom filed.
70. When suit must be for all.
71. Consolidation of suits.
72. Several creditors may join as co-plaintiffs.
73. When one suit is a bar to another.
74. Several disconnected parties may be defendants.
75. When several parties may not join as plaintiffs.
76. Where suit in behalf of all who may participate.
77. When bill will be treated as in behalf of all.
78. Proceedings against administrator, etc., for all.
79. Creditors proving claims are parties and bound.
80. Plaintiff individually not bound by judgment against him as assignee.
81. Other creditors may intervene and participate in surplus.
82. Suit may be maintained by a receiver under order of court.
83. Creditors of corporation may sue, when.
84. When bill may be filed by officer of court, or master.
85. Executor or administrator may file bill.

Sections. Pages.
86. A guardian for an insane person cannot sue in own name.
87. Assignee may file bill.
88. Other parties entitled to file bill.
89. Against whom filed—Defendants.

CHAPTER IV.

PLEADING AND PRACTICE. 118-166

100. Bill or Petition—Scope of.
101. General frame of bill or petition.
102. Particularity required in.
103. Special allegations required.
104. Abatement of suit.
105. Verification.
106. Prayer—Special relief and general relief.
107. Plaintiff has right to control litigation.
108. Lis pendens—Commences when—When operates as—Theory of.
109. Answer, frame of.
110. Answer, scope of.
111. Answer, when under oath.
112. Answer, form of—Usually in two parts.
113. Answer, insufficiency of.
114. Demurrer to bill.
115. Cross bill or petition.
116. Supplemental bill or petition.
117. Decree.
118. Appeals and writs of error.
119. Discharge in bankruptcy as a defense.
120. Limitations as a defense.
121. Laches as a defense.

CHAPTER V.

JUDGMENT, EXECUTION AND RETURN. 167-221

150. Judgment required—General rule.
151. Reason for this primary rule.
152. Rule in United States courts.
153. Practice not uniform in fraudulent conveyances.
154. Levy of execution or return not required, when.
155. Return of execution—When required.
156. Grounds of equitable relief.
157. Nature of lien required.
158. Reasons for rule requiring judgment, etc.

Sections. Pages.
159. General creditor cannot recover by joining with judgment creditor.
160. Attachment as a basis of suit.
161. Exhaustion of legal remedy must be complete.
162. There must be an existing lien.
163. General creditor has no standing.
164. A money decree sufficient.
165. Rule applies to suits to enjoin debtor from selling.
166. Jurisdiction not conferred by supplemental bill.
167. Exceptions to rule requiring judgment, etc.
168. Execution must issue to proper county.
169. Issuing of execution may be waived by defendant.
170. Exhaustion of legal remedy—How established.
171. A debtor of defendant paying protected.
172. Return of execution—When made.
173. Judgment need not be such that immediate levy could be made.
174. Judgment upon a judgment—Effect of.
175. Valid judgment by confession sufficient.
176. Judgment when conclusive, regularity of execution.
177. Judgment not conclusive as to other creditors.
178. Judgment in federal court basis for bill in state court and vice versa.
179. Judgment need not antedate act complained of.
180. Claim against estates must be exhibited to be basis.
181. Bill by wife against husband—Must be creditor.
182. Judgment necessary though fraud alleged.
183. Allegation as to date of judgment—Amendment.
184. Judgment based on tort sufficient.
185. Order of proceeding as between joint tenants and surety.
186. Agreement to pay debts secured by threats not enforcible.
187. One judgment creditor may attack another.

CHAPTER VI.

SUPPLEMENTARY PROCEEDINGS. 222-233

200. General—Proceedings not uniform.
201. Are statutory in lieu of creditors' bills.
202. Common law remedies to be first exhausted.
203. Return of execution before return day.
204. Same—Contrary doctrine.
205. Examination of debtor—Discovery.
    (a) Examination of debtor when execution outstanding.
    (b) Examination of debtor's wife.
206. Examination—Scope of—Discretionary.
    (a) Examination—Power of court commissioner.
    (b) Examination must be in reasonable time.

Sections. Pages.
207. Power of court to enjoin transfers.
208. Husband not a competent witness, when.
209. Receiver in.
210. Power of receiver.
211. Proceedings are ancillary.

CHAPTER VII.

LIEN OF CREDITORS' BILLS. 234-241

220. General rule.
221. Effect of lien secured.
222. Effect of lien.
223. Priority of lien as between joint plaintiffs.
224. From what time lien dates—Does not abate.
225. Lien in supplementary proceedings.

CHAPTER VIII.

PRIORITY AMONG CREDITORS. 242-254

235. Priority defined.
236. General rule.
237. Exceptions to rule—Waiver.
238. Reasons for rule of priority.
239. Rule where bill filed in behalf of all.
240. Priority in relation to other liens.
241. Priority of resident over foreign creditors of insolvent corporation.
Judgment of justice of the peace gives no priority, when.
242. Judgment need not be a lien when conveyance made.
243. Fraudulent grantee cannot question priorities.
244. Supplementary proceedings—Priorities under.
245. Discontinuance of assignment—No priority.
246. Statutory charge in favor of all creditors gives no priority.
247. Priority not permitted in violation of agreement.
Priority where mortgage and assignment simultaneous.
248. Priority of one dealing with fraudulent grantee—When.

CHAPTER IX.

PREFERENCES. 255-267

260. General rule, allowed.
261. Conditions attached.

Sections. Pages.
262. When prohibited by statute.
263. Attitude of creditor preferred.
264. Preferences, when valid.
265. Assignments invalid as to creditors.
266. Preferences, when invalid.
267. Statutory restrictions on preferences.
268. Transactions construed as assignments and void as preferential.
269. Effect of stipulations in assignment as to preferences.

CHAPTER X.

TRUST PROPERTY. 268-281

280. Rights of creditors in relation to, general.
281. Statutory provisions.
282. Public policy.
283. When neither principal nor income liable.
284. General rule—Trust property not reached.
285. Contrary rule.
286. Restrictions on estates in fee.
287. Trust created by the debtor.
288. Trusts subject to rights of creditors.
289. Trust property converted may be followed.
290. Equity jurisdiction of estate in probate.
291. Equity jurisdiction of estate in foreign state.

CHAPTER XI.

FRAUDULENT SALES OF PERSONALTY. 282-289

300. General—Statute of 13 Eliz.—Twyne's case.
301. Fraudulent transfer of stock.
302. Sale induced by fraud of vendee.
303. General assignment for the benefit of creditors.
304. Fraudulent contract not rescinded—Remedy.
305. Reassignment of notes and mortgage.
306. Conditions of rescission.
307. Representations that are fraudulent.
308. Fraudulent assignment.
309. Liability of fraudulent purchaser.
310. Rescinded contract—Resulting trust not established.
311. Proceeding in equity to recover goods or value not sustained.
312. Fraud of vendee—Attitude of third party—Title.
313. Fraudulent purchase—Proceeds reached—Assignment.
314. Deposits in an insolvent bank.

CHAPTER XII.

Sections. Pages.

ESTATES. 290-296

320. Jurisdiction of equity in.
321. Interest of legatee reached in equity.
(a) When legatee may demand payment.
(b) When estate fully administered.
(c) When removal of cloud necessary.
(d) When estate not subject to control of devisees.
322. Death of debtor extinguishes old remedies.
323. Fraudulent discontinuance of assignment.
324. Scope of bill in matters of estates.

CHAPTER XIII.

INJUNCTION. 297-304

330. Injunction against debtor rarely granted.
(a) To prevent removal of property from jurisdiction.
(b) When there has been a fraudulent purchase.
(c) When a lien or trust exists, and no other remedy.
331. Injunction against conspiracy to defraud.
332. Injunction against creditors, when.

CHAPTER XIV.

RECEIVERSHIP. 305-345

350. Appointment of—General.
351. Appointment in discretion of court.
352. Prerequisites to appointment.
353. Statutory jurisdiction not exclusive.
354. Under what circumstances appointed.
355. Receiver in action to rescind sale for fraud.
356. Receiver in attachment proceedings.
357. Receiver in assignments, corporations.
358. Receiver in cases of fraudulent transfers.
359. Receiver in partnership matters.
360. Receiver in supplementary proceedings.
361. Receiver in creditors' bills.
362. Receiver in building and loan associations.
363. Appeal from order appointing.
364. Powers of receiver.
365. Powers of receiver in fraudulent conveyances.
366. Powers of receiver, miscellaneous.

Sections. Pages.
367. Powers of receiver, when he has not.
368. Power to sue.
369. Power to sue in foreign jurisdiction.
370. Suits against receiver.
371. Liability of receiver.
372. Title of receiver in debtor's property.
373. Possession of receiver.
374. Right of creditor to collect unpaid subscription.
375. Claims against receiver and receivership funds.
376. Defense of receiver to claims.
377. Reservation of rights of creditor in presenting claim.
378. Time in which claim must be presented.
379. Validity of claims to receivership funds.
380. Claims against funds not allowed.
381. Claims entitled to preference.
382. Claims not entitled to preference.
383. Expenses against receivership funds.
384. Jurisdiction of court over property and parties.
385. Power of court over receiver and parties.
386. Receivership in bankruptcy.
387. Distribution of receivership funds.

CHAPTER XV.

THE BANKRUPTCY LAW IN ITS RELATIONSHIP AND EFFECTS AS TO CREDITORS. 345-395

400. General.
401. Effect of upon creditors generally.
402. Jurisdiction of bankruptcy court.
403. Liens in state court void, when.
404. Proceedings to obtain possession of property in hands of receiver of state court.
405. Power of bankruptcy court to restrain levy.
406. Lien enforced in state court, when.
407. Jurisdiction in matters of fraudulent conveyance.
408. Jurisdiction where corporation dissolved.
409. Proceedings in state court, when void.
410. Existence of bankrupt law does not suspend state law.
411. Jurisdiction of state court where assignee or trustee is a party.
412. Suspension of state laws.
413. General effects of bankrupt law and proceedings thereunder.
414. Effect of bankruptcy as to liens.
415. Effect of bankruptcy on mortgages and mortgage foreclosures.
416. Injunction in bankruptcy proceedings.
417. Effect of bankruptcy upon assignments and insolvency laws.

Sections. Pages.
418. Effect of bankrupt law on fraudulent conveyances.
419. Effect of bankruptcy law on preferences.
420. Insolvency as an element in bankruptcy.
421. Statute of limitations in bankruptcy.
422. Corporations may be adjudged bankrupts.
423. Effect of bankruptcy on alimony.
424. Exemptions under bankrupt law.
425. Rights of creditors.
426. What are assets.
427. Discharge of debtor.
Appendix.

CASES CITED.

A

	Page
Abbey v. Commercial Bank of New Orleans, 31 Miss. 434	61
Abbey v. Commercial Bank of New Orleans, 31 Miss. 434	163
Abbott v. American Co., 33 Barb. 578	27
Abbott v. Tenney, 18 N. H. 109	72
Abbott v. Tenney, 18 N. H. 109	111
In re Abrahamson & Bretstein, 1 Am. B. R. 44	340
Abraham v. Mercantile T. & D. Co., 86 Md. 254	332
In re Adams, 1 N. B. N. 167	354
In re Adams, 1 Am. B. R. 94	359
In re Adams, 1 Am. B. R. 95	366
In re Adams, 1 Am. B. R. 94, 105	376
In re Adams, 1 Am. B. R. 94	384
In re Adams, 1 Am. B. R. 94	393
In re Adams, 1 Am. B. R. 94, 105	394
In re Adams, 1 N. B. N. 167	374
Adair v. Winchester, 7 Gill. & J. 114	41
Adams v. Bowe, 12 Abb. N. Cas. 322	227
Adams v. Cross, 27 Ill. App. 313	34
Adams v. Crittenden, 106 U. S. 576	64
Adler v. Fenton, 65 U. S. 407	301
Adler v. Fenton, 65 U. S. 407 (24 How.)	52
Adler v. Milwaukee, etc., Co., 13 Wis. 63	7
Adler v. Meyer, 73 Miss. 863	153
Adee v. Bigler, 81 N. Y. 349	52
Adee v. Bigler, 81 N. Y. 349	170
Adee v. Bigler, 81 N. Y. 349	188
Adee v. Bigler, 81 N. Y. 585	189
Addyston Pipe & S. Co. v. City of Chicago, 170 Ill. 580	39
Administrators, etc. v. Wood, 42 N. J. Eq. 563	129
Administrators, etc., v. Wood, 42 N. J. Eq. 563	163
Adsit v. Butter, 87 N. Y. 585	123
Adsit v. Butter, 87 N. Y. 585	170
Adsit v. Butter, 87 N. Y. 585	172
Adsit v. Butter, 87 N. Y. 585	194
Adsit v. Butter, 87 N. Y. 585	241
Ager v. Murray, 105 U. S. 126	32
In re Agins, 1 N. B. N. 180, 93 Fed. 1018	374

Page
Ahlhauser v. Doud, 74 Wis. 400..... 205
Ahlhauser v. Doud, 74 Wis. 400..... 216
Ainsworth v. Barry, 35 Wis. 136..... 230
Alabama I. & S. Co. v. McKeever, 112 Ala. 134..... 46
Alabama & Chatt. R. R. Co. v. Jones, 7 N. B. R. 145 Fed. Cas. 127..... 341
Albany City Bk. v. Dorr, Walk. Ch. 317..... 227
Albany City Bk. v. Schermerhorn, Clark's Ch. 297..... 235
Albany City Bk. v. Schermerhorn, Clark's Ch. 297..... 238
Alberger v. Nat. Bk. 123 Mo. 313..... 261
Albion Malleable Iron Co. v. First Nat. Bank, 4 Det. L. N. 1147, 74 N. W. 515..... 140
Albion Malleable Invest Co. v. First Nat'l Bk., Mich. 74 N. W. 515..... 319
Albright v. Texas, S. F. & N. R. Co., 8 N. M. 422, reversing S. C. 8 N. M. 110..... 179
Albright v. Herzog, 12 Ill. App. 557..... 193
Alden v. Boston, H. & E. R. R. Co., 5 N. B. R. 230, Fed. Cas. 152. 344
Aldrich v. Annin, 54 Mich. 230..... 290
Aldridge v. Muirhead, 101 U. S. 397..... 166
Alexander v. Tams, 13 Ill. 221..... 40
Alexander v. Tams, 13 Ill. 221..... 47
Alexander v. Tams, 13 Ill. 221..... 209
Alexander v. Tams, 13 Ill. 221..... 287
Alexander v. Tolleston Club, 110 Ill. 65..... 59
Almy v. Platt, 16 Wis. 169..... 226
Allen v. Buchanan, 97 Ala. 399..... 304
Allen v. Montgomery, 10 N. B. R. 503..... 383
Allen v. McRae, 91 Wis. 226..... 24
Allen v. Smith, 129 U. S. 465..... 17
Allen v. Watt, 79 Ill. 284..... 206
Alkire Grocery Co. v. Richesin, 91 Feb. Rep. 79..... 64
Alsager & Rowley, 6 Ves. 749..... 86
Alston v. Robinett, 9 N. B. R. 74..... 357
Allen v. McRae, 91 Wis. 226..... 193
Alterange v. Christiansen, 48 Mich. 60..... 36
Ambler v. Choteau, 107 U. S. 586..... 124
Amick v. Young, 69 Ill. 542..... 196
American Exch. Nat. Bk. v. Walker, 164 Ill. 135..... 19
American Exchange Bk. v. Walker, 164 Ill. 135..... 252
American Exchange Nat. Bk. v. Walker, 164 Ill. 135, affirming S. C. in 60 Ill. App. 510..... 293
American Freehold Land Mort. Co. v. Woodworth, C. C. N. D. N. Y. 82 Fed. Rep. 269..... 330
American Sugar R. Co. v. Fancher, 145 N. Y. 552..... 69
American Sugar R. Co. v. Fancher, 145 N. Y. 552..... 281
Am. Sugar Ref. Co. v. Fancher, 145 N. Y. 552..... 288

Page

American Sugar Ref. Co. v. Fancher, 145 N. Y. 552, reversing 81 Hun. 56 283
Amy v. Manning, 149 Mass. 487 43
Amy v. Manning, 149 Mass. 487 133
Amy v. Manning, 149 Mass. 487 326
Amy v. Manning, 149 Mass. 487 328
America, etc., Co. v. Northwestern, etc., Co., 166 Mass. 337 244
Ames v. Union P. R. Co., 74 Fed. Rep. 335 334
Anderson v. Carey, 36 Ohio St. 506 276
Anderson v. Newman, 60 Miss. 532 147
Anderson v. Bradford, 5 J. J. Marsh 69 200
Anderson's Assignee v. Tuttle, 26 N. J. Eq. 144 112
Anderson's Assignees v. Tuttle, 26 N. J. Eq. 144 52
Anderson v. Anderson, 4 Hen. & M. (Va.) 475 96
Andrews v. Whitney, 82 Hun. 117, 31 N. Y. Sup. 164 280
Andruss v. Doolittle, 11 Conn. 283 111
Angell v. Draper, 1 Vern 399 171
Angell v. Draper, 1 Vern 399 172
Angell v. Draper, 1 Vern 398, 399 173
Angell v. Draper, 1 Vern 399 177
Annin v. Annin, 24 N. J. Eq. 184 74
Annin v. Annin, 24 N. J. Eq. 184 106
Annin v. Annin, 24 N. J. Eq. 184 166
Anthracite Ins. Co. v. Sears, 109 Mass. 383 34
Anthony v. Wood, 96 N. Y. 181 199
Applegate v. Applegate, (Ia.) 78 N. W. 34 45
Applegate v. Applegate, (Ia.) 78 N. W. 34 179
Applegate v. Applegate, (Ia.) 78 N. W. 34 254
Appleton v. Stevers, Ass., 10 N. B. R. 515 342
Avery v. Johann, 27 Wis. 246 125
Arglasse v. Muschamp, 1 Vern. 237 58
In re Arnold, 1 N. B. N. 334 385
Arbuckle Bros. Coffee Co. v. Werner, 77 Tex. 43 166
Arbuckle Bros. Coffee Co. v. Wenar, 77 Tex. 43 188
Armington v. Rau, 100 Pa. 165 188
Artman v. Giles, 155 Pa. St. 409 19
Arthur v. Willins, 44 Minn. 409 54
Arthur v. Hoysradt, 11 Paige Ch. 495 295
Armstrong v. Cooper, 11 Ill. 560 66
Armstrong v. Cooper, 11 Ill. 560 218
Armstrong v. McLean, 153 N. Y. 490 320
Armstrong v. McLean, 153 N. Y. 490 328
Armstrong v. Rickey, 2 N. B. R. 150 364
Armstrong v. Trautman, 36 Fed. Rep. 275 64
Ashcraft v. Walworth, 1 Holmes C. C. 152 33
Ashcraft v. Walworth, 1 Holmes C. C. 152 41
Ashurst v. Given, 5 W. & S. 323 271

Page

Atkins v. Shepard, 43 Ch. Div. 131 206
Atkinson v. Foster, 134 Ill. 472 89
Atkinson v. Foster, 134 Ill. 472 112
Atkinson v. Foster, 134 Ill. 472 144
Atkinson v. Weidner, 79 Mich. 575 264
Atkinson v. Denby, 7 H. & N. 934 258
Atlantic Trust Co. v. Woodbridge Canal & I. Co., 86 Fed. Rep. 975 336
Athey v. Knotts, 6 B. Mon. 24 31
Athey v. Knotts, 6 B. Mon. 24 46
Atlantic Trust Co. v. Carbondale Coal Co., 99 Ia. 234 335
In re Atl. Mut. Life Ins. Co., 16 N. B. R. 541 342
Re Atty. Gen. v. Guardian Mut. L. Ins. Co., 77 N. Y. 272 308
Re Atty. Gen. v. Guardian Mut. Life Ins. Co., 77 N. Y. 272 328
Attorney General, 9 N. B. R. 117 359
Atwater v. American Exchange N. Bk., 152 Ill. 605 70
Atwood v. Impson, 20 N. J. Eq. 156 125
Aultman & T. Co. v. Pikop, 56 Minn. 531 14
Austin v. Figueira, 7 Paige Ch. 56 115
Austin v. Figueira, 7 Paige Ch. 56 211
Austin v. Figueira, 7 Paige Ch. 56 312
Austin v. Bruner, 169 Ill. 178 174
Austin v. Bruner, 169 Ill. 178 175
Austin v. Bruner, 169 Ill. 178 192
Austitn v. Bruner, 169 Ill. 178 202

B

Babbitt v. Dotten, 14 Fed. Rep. 19 129
Babcock v. Booth, 2 Hill 181 111
Babcock v. Blanchard, 86 Ill. 165 112
Badger v. Badger, 2 Wall. 87, 94 165
Badger v. Sutton, 30 App. Div. 294; 52 N. Y. Supp. 16 316
Bailey v. Bidwell, 13 M. & W. 73 288
Bailey v. Ryder, 10 N. Y. 363 37
Bailey v. Ryder, 10 N. Y. 363 59
Bailey v. Wright, 2 Bond 181 143
Bailie v. McWhorter, 56 Ga. 183 273
Baines v. Babcock, 95 Cal. 581 83
Baines v. Babcock, 95 Cal. 581 98
Baines v. Babcock, 95 Cal. 581 178
Baines v. Babcock, 95 Cal. 581 213
Baines v. Babcock, 95 Cal. 581 214
Baines v. West Coast Lumber Co., 104 Cal. 1 93
Baines v. West Coast Lumber Co., 104 Cal. 1 103
Baker v. Backus, 32 Ill. 79 82

Page
Baker v. Bliss, 39 N. Y. 70 125
Baker v. Brown, 146 Mass. 271 34
Baker v. Brown, 146 Mass. 369 42
Baker v. Brown, 146 Mass. 369 279
Baker v. Dayton, 28 Wis. 367 11
Baker v. Shote, 65 Wis. 50 32
Ballentine v. Beal, 3 Scam. 203 81
Ballentine v. Beall, 3 Scam. 203 103
Ballentine v. Beall, 3 Scam. 203 170
Ballentine v. Beall, 3 Scam. 203 171
Ballentine v. Beall, 3 Scam. 203 196
Ballentine v. Beall, 3 Scam. 203 245
Ballentine v. Beall, 3 Scam. 203 236
Ballin v. Loeb, 79 Wis. 404 54
Ballin v. Loeb, 78 Wis. 404 217
Ballin v. Loeb, 78 Wis. 404 216
Ballston Spa. Bk. v. The Marine Bk., 18 Wis. 490 83
Ballston Spa. Bk. v. The Marine Bk., 18 Wis. 490 230
Baltimore B. & L. A. v. Alderson, 90 Fed. Rep. 142 310
Bank of America v. Pollock, 4 Edw. Ch. 215 92
Bank v. Dibrell, 3 Sneed. 379 31
Bank of Blount County v. Smith, Ch. App. Aff'd by Sup. Ct. Tenn. 48 S. W. 296 160
Bank of Blount County v. Smith, 48 S. W. 296 296
Bank of Rochester v. Emerson, 10 Paige Ch. 115 42
Bank v. Carpenter, 101 U. S. 567 165
Bank of Commerce v. Chambers, 96 Mo. 459 291
Bank of Commerce v. Fowler, 93 Wis. 241 14
Bank of Com. v. Chambers, 96 Mo. 459 292
Bank v. Davis, 21 Pick. 42 276
Bank, etc. v. Dodge, 8 Barb. 233 19
Bank of Georgia v. Higginbottom, 34 U. S. 48 18
Bank v. Hopkins, 111 Pa. St. 328 7
Bank v. Katz, 1 Am. B. R. 19 349
Bank v. Katz, 1 Am. B. R. 19 360
Bancroft v. Fitch, 164 Mass. 401 51
Barger v. Buckland, 28 Gratt. 850 153
Barker v. Dayton, 28 Wis. 367 226
Barker v. Dayton, 28 Wis. 367 231
Barker v. Dayton, 28 Wis. 367 233
Barling v. Bishop, 29 Beav. 417; 6 Jur. (N. S.) 812 220
Barne's Appeal, 9 U. S. 521 368
Barnes v. Treat, 7 Mass. 271 199
Bartlett v. Drew, 57 N. Y. 587 83
Bartlett v. Drew, 57 N. Y. 587 98
Bartlett v. Drew, 57 N. Y. 587 179
Bartlett v. McNeil, 60 N. Y. 53; S. C. 49 How. Pr. 55 11

Page
Bartlett v. Wilbur, 53 Md. 485 326
Barto's Appeal, 55 Pa. St. 386 71
Barton v. Barbour, 104 U. S. 126 185
Barnum v. Hempstead, 7 Paige 568 263
Barton v. Hosner, 24 Hun. 467 224
Barton v. Hosner, 24 Hun. 467 317
Bartholomew v. West, 8 N. B. R. 12; 2 Dill. 290 392
Bartholomew v. Weld, 127 Mass. 210 42
Bartholomew v. Weld, 127 Mass. 210 280
Barnardt v. Campbell, 58 N. Y. 73 288
Barnardt v. Campbell, 58 N. Y. 73 289
Barnett v. East Tennessee, V. & G. R. Co., 48 S. W. 817 108
Barnes v. Dow, 59 Vt. 530 273
Barney v. Patterson, 6 Harr. & T. 182 217
Barry v. Abbott, 100 Mass. 396 5
Barry v. Abbot, 100 Mass. 396 105
Barry v. Abbot, 100 Mass. 396 189
Barry v. Abbot, 100 Mass. 396 190
Bartles v. Gibson, 17 Feb. Rep. 297 125
Bassett v. Orr, 7 Biss. 296 205
Bate v. Graham, 11 N. Y. 237 30
Bate v. Graham, 11 N. Y. 237 201
Bate v. Graham, 11 N. Y. 237 287
Bates v. Great Western Tel. Co., 134 Ill. 536 82
Bates v. Plousky, 28 Hun. 112 299
Bates v. Lyons, 7 Paige, 85 212
Batterson v. Ferguson, 1 Barb. N. Y. 490 145
Bay v. Cook, 31 Ill. 336 66
Bay v. Cook, 31 Ill. 336 68
Bay v. Cook, 31 Ill. 336 177
Bay v. Cook, 31 Ill. 336 193
Bay v. Cook, 31 Ill. 336 195
Bay v. Cook, 31 Ill. 336 214
Baxter v. Allen, 77 Pa. 59 188
Bayard v. Hoffman, 4 Johns. Ch. 450 5
Bayard v. Hoffman, 4 Johns. Ch. 450 18
Bayard v. Hoffman, 4 Johns. Ch. 450 72
Bayard v. Hoffman, 4 Johns. Ch. 450 192
Bayard v. Hoffman, 4 Johns. Ch. 450 113
Bayard v. Hoffman, 4 Johns. Ch. 450 236
Bayard v. Hoffman, 4 Johns. Ch. 450 277
Bayard v. Hoffman, 4 Johns. Ch. 450 279
Bayard v. Hoffman, 4 Johns. Ch. 450 328
Bayard v. Fellows, 28 Barb. 451 52
Beaucamp v. Huntley, Jac. 546 303
Beardsley v. Foster, 36 N. Y. 561 188
Bean v. Patterson, 122 U. S. 496 258

Page
Beach v. White, Walk. Ch. 495 227
Beach v. Bestor, 45 Ill. 341 196
Beach v. Bestor, 45 Ill. 341 171
Beach v. Bestor, 45 Ill. 341 198
Beach v. Hodgdon, 66 Cal. 187 75
Beach v. Hodgdon, 66 Cal. 187 60
Beall v. Harrell, 7 N. B. R. 400 382
Beck v. Burdett, 1 Paige Chy. 305 12
Beck v. Burdett, 1 Paige 305 27
Beck v. Burdett, 1 Paige 305 65
Beck v. Burdett, 1 Paige Ch. 305 73
Beck v. Burdett, 1 Paige 305 132
Beck v. Burdett, 1 Paige 305 171
Beck v. Burdett, 1 Paige, 305 172
Beck v. Burdett, 1 Paige 305 176
Beck v. Burdett, 1 Paige 308 182
Beck v. Burdett, 1 Paige Ch. 305 188
Beck v. Burdett, 1 Paige 505 227
Beck v. Burdett, 1 Paige 305 235
Beebe v. Saulter, 87 Ill. 518 213
Beck v. Cole, 4 Sandf. 79 257
Beck v. Rainey, 28 Miss. 111 129
Becker v. Torrance, 31 N. Y. 631 235
Becker v. Torrance, 31 N. Y. 631 318
Beecher v. Clark, 10 N. B. R. 385 382
Behan v. Warfield, 90 Ky. 151 176
Beidler v. Crane, 135 Ill. 92 32
Beidler v. Crane, 135 Ill. 92 158
Beith v. Porter, 5 Det. L. N. 837; 78 N. W. 336 139
Belcher v. Arnold, 14 R. I. 613 5
Belcher v. Arnold, 14 R. I. 613 113
Belden v. Smith, 16 N. B. R. 302 364
Bell v. Menifield, 109 N. Y. 202 150
Bell's Appeal, 115 Pa. St. 88 54
Bellamy v. Sabine, 1 De Gex. & J. 566 141
Belmont Branch Bk. v. Hoge, 35 N. Y. 65 125
Belmont N. Co. v. Columbia I. & S. Co., 46 Fed. Rep. 336 312
Benham v. Ham, 5 Wash. 128 186
Bennett v. McGuire, 58 Barb. 625 225
Bennett v. Stout, 98 Ill. 47 251
Bennett v. Butterworth, 11 How. 669 174
Bennett v. Sweet, 171 Mass. 600 45
Benson v. Le Roy, 4 Johns. Ch. 651 106
Bentley v. Whittemore, 4 C. E. Green 462 303
Bergen v. Carman, 79 N. Y. 146 15
Bergen v. Varrelmann, 127 N. Y. 281 260
Bernard v. Myroleum, 147 Mass. 356 106

Page
Bethel v. Chipman, 57 Mich. 379 ... 206
Beverly v. Rhodes, 86 Va. 415 ... 99
Beverly v. Rhodes, 86 Va. 415 ... 192
Bickerdike v. Allen, 157 Ill. 95 ... 132
Bickerdike v. Allen, 157 Ill. 95 ... 139
Bickford v. McComb, 88 Fed. Rep. 428 ... 82
Bickham v. Lake, 51 Fed. Rep. 892 ... 263
Bidlack v. Mason, 26 N. J. Eq. 230 ... 93
Bidle Purchasing Co. v. Port Townsend Steel Wire & Nail Co., 16 Wash. 681 ... 332
Bierne v. Ray, 37 W. Va. 571 ... 122
Bigelow v. Andress, 31 Ill. 322 ... 52, 66
Bigelow v. Andress, 31 Ill. 322 ... 170
Bigelow v. Andress, 31 Ill. 322 ... 174
Bigelow v. Andress, 31 Ill. 322 ... 177
Bigelow v. Andress, 31 Ill. 322 ... 180
Bigelow v. Andress, 31 Ill. 322 ... 181
Bigelow v. Andress, 31 Ill. 322 ... 191
Bigelow v. Andress, 31 Ill. 322 ... 200
Bigelow v. Andress, 31 Ill. 322 ... 219
Bigelow v. Andress, 31 Ill. 322 ... 298
Bigelow, B. S. Co. v. Magee, 27 N. J. Eq. 697 ... 170
Biglow v. Magee, 27 N. J. Eq. 392 ... 74
Billings v. Marsh, 153 Mass. 311 ... 273
In re Bininger, Fed. Cas. 1420 ... 377
Birdsall v. Dunn, 16 Wis. 235 ... 230
Birely v. Staley, 5 Gill. & J. 432 ... 246
Biron v. Edwards, 77 Wis. 477 ... 103
Bishop v. Halsey, 3 Abb. Pr. 400 ... 96
Bishop, etc. v. Paine, 11 Ves. 194 ... 151
Bissell v. Continental Trust Co., 25 Misc. 724; 55 N. Y. Supp. 570 277
Bissell v. Heath, 98 Mich. 472 ... 330
Bittinger v. Kaston, 111 Ill. 260 ... 136
Blabon v. Gilchrist, 67 Wis. 38 ... 229
Blabon v. Gilchrist, 67 Wis. 38 ... 230
Blabon v. Gilchrist, 67 Wis. 38 ... 225
Blackburn v. Lake Shore Co., 90 Wis. 362 ... 14
Blackburn v. Lake Shore Traffic Co., 90 Wis. 362 ... 184
Blackstone Bank v. Davis, 21 Pick. 42 ... 275
Blackstone Bk. v. Davis, 21 Pick 42 ... 276
Blackett v. Laimbeer, 1 Sandf. Ch. 366 ... 95
Blackman v. Houssels, Tex. 35 S. W. 511 ... 34
Blackhouse v. Harrison, 5 B. & Ad. 1098 ... 125
In re Black, 2 N. B. R. 65 ... 364
In re Black, 2 N. B. R. 65 ... 365
Blair v. Illinois Steel Co., 159 Ill. 350 ... 70
Blair v. Ill. Steel Co., 159 Ill. 350 ... 196

Page
Blair v. Illinois Steel Co., 159 Ill. 350 202
Blair v. Finlay, 75 Tex. 210 124
Blair v. St. Louis, Hannibal, etc., R. R. Co., 22 Fed. Rep. 36 ... 26
Blaisdell v. Stevens, 16 Vt. 179 141
Blanchard v. Blanchard, 1 Allen 223 51
Blanchard v. Williamson, 70 Ill. 647 293
Blanc v. Paymaster M. Co., 95 Cal. 524 197
Blannerhassett v. Sherman, 105 U. S. 100 32
Blake v. Ala. & Chat. R. R. Co., 6 N. B. R. 331; Fed. Cas. 1493. 340
Blake v. Domestic Mnfg. Co., N. J. Eq. 38 Atl. 241 320
Blake v. Domestic Mnfg. Co., N. J. Eq., 41 Atl. 376 334
Blake v Valentine Co., 1 Am. B. R. 372 373
Blake v. Francis Valentine Co., 89 Fed. 691; 94 Fed. 793 374
Blake v. Boisjoli, 51 Minn. 296 14
Blakey v. Boomville Nat'l Bk., 1 N. B. N. 411 385
Blake v. Sawin, 10 Allen 340 113
Bliss v. Matteson, 45 N. Y 22 257
Block v. Jefferies, 46 La. Ann. 1104 98
Bloodheim v. Moore, 11 Md. 365 52
In re Bloss, 4 N. B. R. 147 375
Bloodgood v. Meissner, 84 Wis. 452 73
Bloodgood v. Clark, 4 Paige 574 298
Bloodgood v. Clark, 4 Paige Ch. 574 312
Blum v. Schram, 58 Tex. 524 187
Blum v. Van Vechten, 92 Wis. 378 327
In re Blumberg, 1 Am. B. R. 633 364
In re Blumberg, 1 N. B. N. 238 367
Board of Public Works v. Columbian College, 84 U. S. 521 6
Board of Public Works v. Columbia College, 84 U. S. 521 69
Board of Freeholders v. Henry, 41 N. J. Eq. 388 271
In re Boansteel, 3 N. B. R. 517 351
Bodine v. Edwards, 10 Paige 504 200
Bodine v. Edwards, 10 Paige 504 280
Boese v. King, 108 U. S. 379 379
Boid v. Dean, 3 Dick. Ch. 193 220
Boltz v. Stolz, 41 Ohio St. 540 35
Bomar v. Means, 37 S. C. 520 102
Bomar v. Means, 31 S. E. 234 160
Bomar v. Means, 53 S. C. 232 316
Bond v. Seymore, 2 Pin. 105 14
Bonnell v. Gray, 36 Wis. 574 215
Bonslough v. Bonslough, 68 Pa. St. 495 110
Bonte v. Cooper, 90 Ill. 440 240
Bonte v. Cooper, 90 Ill. 440 48
Booth v. Clark, 17 How. 322 43
Booth v. Clark, 17 How. 322 326
Booth v. Clark, 58 U. S. 322 223

Page
Booth v. Nickerson, 1 N. B. N. 476 359
Boothe v. Brooks, 12 N. B. R. 398 369
Bornesly v. Powell, 1 Ves. Sr. 120 18
In re Borst, 11 N. B. R. 96 395
Boston Bk. v. Minot, 3 Metc. 507 42
Botsford v. Bun, 2 Johns. Ch. 405 277
Bostsford v. Bun, 2 Johns. Ch. 405 279
Bostwick v. Menck, 40 N. Y. 383 317
Bostwick v. Menck, 40 N. Y. 383 224
Bostwick v. Menck, 40 N. Y. 383 328
Bostwick v. Menck, 40 N. Y. 383 232
Boston Invest. Co. v. Pacific Short Line Bridge Co., 104 Ia. 311. 315
Bosworth v. Terminal R. A., 53 U. S. App. 302; 80 Fed. Rep. 969. 319
Bottsford v. Beers, 11 Conn. 369 5
Boulton v. Dement, 123 Ill. 142 174
Boughton v. Smith, 26 Barb. (N. Y.) 635 99
Bouton v. Dement, 123 Ill. 142 160
Bouton v. Smith, 113 Ill. 481 105
Bowen v. Parkhurst, 24 Ill. 257 208
Bowen v. Parkhurst, 24 Ill. 257 209
Bowen v. Parkhurst, 24 Ill. 257 227
Bowen v. Gent, 54 Md. 555 80
Bownes v. Weld, 3 Daly 253 221
Boyd v. Dunlap, 1 Johns. Ch. 478 159
Boyd v. Dunlap, 1 Johns. Ch. 478 257
Boyd v. Hoyt, 5 Paige Ch. 65 105
Boyd v. Hoyt, 5 Paige Ch. 65 115
Re Boyse, L. R., 15 Ch. Div. 591 304
Boyne v. Brewer Pottery Co., 90 Fed. Rep. 754 322
Boynton v. Rowson, Clark's Ch. 584 244
In re Bozeman, 1 N. B. N. 479 359
In re Bozeman, 1 N. B. N. 479 360
Brabrook, etc., Co. v. Belding Bros., 40 Ill. App. 326 139
Bracken v. Johnston, 15 N. B. R. 106 357
Bradley v. Piexoto, 3 Ves. Jr. 324 275
Braden v. Grady, 37 Ga. 660 29
Braem v. Merchants' Nat. Bank, 127 N. Y. 508 28
Bragg v. Gaynor, 85 Wis. 468 206
Bragg v. Gaynor, 85 Wis. 468 239
Bragg v. Gaynor, 85 Wis. 468 250
Bragg v. Gaynor, 85 Wis. 468 312
Brahman v. Stiles, 2 Pick. 460 42
Brahman v. Stitles, 2 Pick. 460 271
Brainard v. Van Kuran, 22 Ia. 261 171
Brainard v. Van Kuran, 22 Ill. 261 176
Brainard v. Dunning, 30 N. Y. 211 263
Bramhall v. Ferris, 14 N. Y. 41 270

Page
In re Brand, 3 N. B. R. 85 388
Brandirff v. Harrison Co., 50 Ia. 164 102
Brandon v. Robinson, 18 Ves. Jr. 429 271
Brandon v. Robinson, 18 Ves. Jr. 429 275
Brashear v. West, 7 Pet. 608 256
Bray v. Cobb, 1 Am. B. R. 153 379
Brernihan v. Sheehan, 125 Mass. 11 33
Breit v. Yeaton, 101 Ill. 242 164
Bridgman v. McKissick, 15 Ia. 260 236
Bridgman v. McKissick, 15 Ia. 260 238
Bridgman v. McKissick, 15 Ia. 260 247
In re Bridgman, 2 N. B. R. 284 357
The Bridgeport Bank v. Eldredge, 28 Conn. 556 18
Briggs v. Penniman, 8 Cow. 387 55
Brigham v. Luddington, 12 Blatch. 237 43
Brigham v. Luddington, 12 Blatchf. 237 326
Brinckerhoff v. Brown, 4 Johns. Ch. 671 279
Brinkerhoff v. Brown, 6 Johns. Ch. 139 96
Brinkerhoff v. Brown, 6 Johns. (N. Y.)139 97
Brinkerhoff v. Brown, 6 Johns. Ch. 139, 151 100
Brinkerhoff v. Brown, 6 Johns. Ch. 139 103
Brinkerhoff v. Brown, 4 Johns. Ch. R. 671 172
Brinkerhoff v. Brown, 4 Johns. Ch. 671 188
Brinkerhoff v. Brown, 4 Johns. Ch. 671 195
Brinkerhoff v. Brown, 4 Johns. Ch. 671 196
Brinkerhoff v. Brown, 4 Johns. Ch. 671 237
Brinkman v. Jones, 44 Wis. 498 126
In re Brinkman, 7 N. B. R. 21 353
Bristol v. Sanford, 12 Blatchf. 341 55
Broadway Nat. Bk. v. Adams, 133 Mass. 170 33
Broadway Nat. Bk. v. Adams, 133 Mass. 170 42
Broadway Nat. Bk. v. Adams, 133 Mass. 170 271
Broadway Nat. Bk. v. Adams, 133 Mass. 170 273
Brock v. Rich, 76 Mich. 644 44
Brock v. Rich, 76 Mich. 644 176
Bronson v. Wilmington, etc., Ins. Co., 85 N. C. 411 54
In re Brooks, 1 Am. B. R. 531 371
Brooks v. Cook, 8 Mass. 247 199
Brooks v. Gibbons, 4 Paige Ch. 374 104
Brooks v. Gibbons, 4 Paige Ch. 374 107
Brooks v. Reynolds, 1 Bro. C. C. 183 107
Brooks v. Wilson, 53 Hun. 173 177
In re Brown, 1 Am. B. R. 107 351
In re Brown, 1 Am. B. R. 107 384
In re Brown, 1 Am. B. R. 107 385
Brown v. Bates, 10 Ala. 432 102
Brown v. Bates, 10 Ala. 432 135

Page
Brown v. Campbell, 100 Cal. 635 ... 94
Brown v. Chubb, 135 N. Y. 174 ... 29
Brown v. Chubb, 135 N. Y. 174 ... 253
Brown v. County of Buena Vista, 95 U. S. 157 ... 165
Brown v. Edmonds, 9 S. D. 273 ... 27
Brown v. Farwell, 74 Fed. Rep. 764 ... 140
Brown v. Fisk, 23 Fed. Rep. 228 ... 7
Brown v. Fuller, 13 N. J. Eq. 271 ... 74
Brown v. Gibbons, 14 N. B. R. 407 ... 370
Brown v. Lake Superior Iron Co., 134 U. S. 530 ... 204
Brown v. Maryland Freestone Mining, etc., Co., 55 Md. 547 ... 156
Brown v. Morgan, 3 Edw. Ch. 278 ... 145
Brown v. Niles, 16 Ill. 385 ... 62
Brown v. Nichols, 42 N. Y. 26 ... 9
Brown v. Nichols, 42 N. Y. 26 ... 181
Brown v. Nichols, 42 N. Y. 26 ... 235
Brown v. Nichols, 42 N. Y. 26 ... 241
Brown v. Parker, 28 Wis. 21 ... 215
Brown v. Ricketts, 3 John. Ch. 553 ... 80
Brown v. Stanley, 105 Ga. 469 ... 316
Brown v. Vandermeulen, 44 Mich. 522 ... 22
Brown v. Williamson, 36 Penn. St. 338 ... 271
Brownell v. Curtis, 10 Paige Ch. 210 ... 18
Brownell v. Curtis, 10 Paige Ch. 210 ... 112
Brownell v. Curtis, 10 Paige N. Y. 210 ... 145
Brundage v. Mining Co., 12 Or. 322 ... 83
Browning v. Hart, 6 Barb. 91 ... 112
Browning v. Bettis, 8 Paige 568 ... 31
Browning v. Bettis, 8 Paige Ch. 568 ... 154
Brum v. Merchants Co., 16 Fed. Rep. 140 ... 27
Brunner, Mounds & Co. v. Central Glass Co., 18 Ind. App. 174. 323
In re Bruss Ritter Co., 90 Fed. 651 ... 377
Bryan v. Knickerbocker, 1 Barb. Ch. 409 ... 274
Bryan v. May, 9 App. Cases D. C. 383 ... 25
Bryan v. May, 9 App. Cases D. C. 383 ... 292
Buchanan v. Hunt, 98 N. Y. 560 ... 233
Buchannan v. Smith, 83 U. S. 277 ... 363
Buchanan v. Smith, 83 U. S. 277 ... 378
Buckmaster v. Carlin, 3 Scam. 104 ... 154
Buckner v. Gordy, 28 La. Ann. 596 ... 80
Budd v. Atkinson, 50 N. J. Eq. 530 ... 21
Buehler v. Gloninger, 2 Watts. 226 ... 110
Buffington v. Harvey, 95 U. S. 99 ... 82
Bugby v. Atlantic, M. & O. R., 86 Pa. St. 291 ... 302
Bullard v. Kenyon, 49 N. Y. S. R. 132; 21 N. Y. Supp. 32 ... 221
Bullitt v. Taylor, 34 Miss. 708 ... 216
Bulkly v. Eckert, 3 Bau. 368 ... 31

Page
Bull v. Bank, 90 Ky. 452 271
Bull v. Ford, 66 Cal. 176 128
Bunce v. Bailey, 39 Mich. 192 133
Bunn v. Fonda, 2 N. Y. Code Rep. 70 328
In re Buntrock Clothing Co., 1 Am. B. R. 454 366
In re Buntrock Clothing Co., 1 N. B. N. 291 371
Burgess v. Simonson, 45 N. Y. 225 215
In re Burk, 3 N. B. R. 76 390
Burlock v. Taylor, 16 Pick. 335 303
Burne v. Kunzman, N. J. 19 Atlantic 667 25
Burnett v. Morris Mercantile Co., 1 Am. B. R. 229 351
Burnett v. Morris Mercantile Co., 1 Am. B. R. 229 381
Burney v. Morgan, 1 Sim. & Stu. 358 97
Burnham v. City of Fond du Lac, 15 Wis. 193 40
Burnham v. The City, &c., 15 Wis. 193 31
Burnham v. Haskins, 79 Mich. 35 253
Burnham v. Lamar Ins. Co. 79 Ill. 160 162
Burns v. Mose, 6 Paige Ch. 108 18
Burrell v. Leslie, 6 Paige 445 238
Burrell v. Leslie, 6 Paige Ch. 445 244
Burroughs v. Elton, 11 Ves. 29 73
Burt v. Keyes, 1 Flipp. 61 71
Burton v. Smith, 38 U. S. 464 237
Bush v. Hanson, 70 Ill. 480 153
Bush v. Roberts, 111 N. Y. 278 50
Bush v. Roberts, 111 N. Y. 278 51
Bussing v. Rice, 2 Cush. 48 288
Bussing v. Rice, 2 Cush. 48 289
Buswell v. Order of Iron Hall, 161 Mass. 224 244
Buswell v. Supreme Sitting, etc., 161 Mass. 224 250
Buswell v. Lincks, 8 Daly 518 150
Butcher v. Harrison, 4 B. & A. 129 113
Butchers, etc., Bk. v. Willis, 1 Edw. Ch. 645 149
Butler v. Stoddard, 7 Paige Ch. 163 18
Butler Paper Co. v. Robbins, 151 Ill. 588 70
Butts v. Newton, 29 Wis. 632, 640 230

C

Cahn v. Person, 56 Miss. 360 47
Cahn v. American Looking Glass Mfg. Co. (Ill. C. C.) 12 Nat. Corp. Rep. 462 202
Cairns v. Ingram, 8 Pa. Sup. Ct. 514 195
Caldwell v. Montgomery, 8 Ga. 106 291
Cameron v. Savage, 37 Ill. 172 134
Cameron v. Groveland Improv. Co., Wash. 54 Pac. 1128 319
In re Camerontown M. F. L. & W. S. Ins. Co., 1 N. B. N. 383 391

Page
In re Camp, 1 Am. B. R. 165 393
In re Camp, 1 N. B. N. 142 392
Campbell v. Foster, 35 N. Y. 361 271
Campbell v. Foster, 35 N. Y. 361 273
Campbell v. Foster, 35 N. Y. 361 328
Campbell v. Colorado Coal & Iron Co., 9 Col. 60 256
Campbell v. Campbell, 70 Wis. 311 183
Campbell v. Jones, 25 Minn. 155 82
Campbell v. Powers, 139 Ill. 128 128
Campbell v. Whitson, 68 Ill. 240 213
Candler v. Pettit, 1 Paige Ch. 168 20
Candee v. Lord, 2 N. Y. 269 215
Cane v. Dernberg, (Ill. C. C.) 12 Nat. Corp. Rep. 260 140
Capital City Bk. v. Parent, 134 N. Y. 527 187
Cape May, etc., R. Co. v. Johnson, 53 N. J. Eq. 422 154
Carbiener v. Montgomery, 97 Ia. 659 93
Carlisle v. Tindall, 49 Miss. 229 72
Carlisle v. Rich, 8 N. H. 44 136
Carlton v. Felder, 6 Rich. S. C. Eq. 58 147
Carlton v. Felder, 6 Rich. Eq. 58 295
Carney v. Gleissner, 58 Wis. 674 230
Carpenter v. Osborn, 102 N. Y. 552 20
Carpenter v. Osborne, 102 N. Y. 552 123
Carpenter v. Osborn, 102 N. Y. 552 213
Carpenter v. Osborn, 102 N. Y. 552 215
Carpenter v. O'Connor, 1 Am. B. R. 383 341
Carr v. Fearington, 63 N. C. 560 236
Carr v. Gale, 3 Wood. C. & M. 38 112
Carrington v. Didier, 8 Gratt. 260 294
Carrow Iron Co. v. Maclaren, 5 H. L. Cas. 416 59
Carrow Iron Co. v. Maclaren, 5 H. L. Cas. 416 304
Carson v. Dunham, 149 Mass. 52 302
Carter v. Hobbs, 1 Am. B. R. 215 351
Carter v. Hobbs, 1 N. B. N. 191 354
Carter v. Hobbs, In re, 1 Am. B. R. 215, note 360
Carter v. Hobbs, 1 Am. B. R. 215 361
Carter v. Hobbs, 1 Am. B. R. 215 368
Carter v. Hobbs, 1 Am. B. R. 215 381
Carter v. U. S. Ins. Co., 1 Johns. Ch. 463 41
Carter v. Hightower, 79 Tex. 135 170
Carter v. Wyrick, (Tenn.) 42 S. W. 159 33
Carter v. New Orleans, 19 Fed. Rep. 659 304
In re Carter, 1 Am. B. R. 160 355
Cartney v. Bostwick, 52 N. Y. 53 188
Carteret v. Petty, 2 Swanst. 323 N.; 2 Ch. Cas. 214 59
Carver v. Barker, 73 Hun. 416 28
Carver v. Peck, 131 Mass. 291 32

Page
Carver v. Peck, 131 Mass. 291 33
Carver v. Peck, 131 Mass. 291 41
Carver v. Peck, 131 Mass. 291 170
Carver v. Peck, 131 Mass. 291 176
Carver v. Peck, 131 Mass. 291 303
Case v. Beauregard, 99 U. S. 119 172
Case v. Beauregard, 101 U. S. 688 195
Case v. Beauregard, 101 U. S. 688 198
Case v. Gerrish, 15 Pick. 49 258
Case v. Fredrickson, 63 Wis. 501 335
Case Mfg. Co. v. Perkins, 2 Det. L. N. 457 25
J. I. Cas. T. M. Co. v. Miracle, 54 Wis. 295 199
Case v. Phelps, 39 N. Y. 164 27
Castle v. Lewis, 78 N. Y. 131 199
Cassidy v. Meacham, 3 Paige Ch. 311 208
Cassidy v. Meacham, 3 Paige Ch. 311 131
Cassidy v. Meacham, 3 Paige 311 170
Cassidy v. Meacham, 3 Paige Ch. 311 210
Cassidy v. Meacham, 3 Paige 311 227
Cass v. Manchester Co., 9 Fed. Rep. 640 27
Caswell v. Caswell, 28 Me. 232 111
Cassady v. Grimmelman, 77 N. W. 1067 36
Casto v. Greer, 44 W. Va. 332 221
Cates v. Allen, 149 U. S. 451 52
Cates v. Allen, 149 U. S. 451 66
Cates v. Allen, 149 U. S. 451 172
Cates v. Allen, 149 U. S. 451 173
Cates v. Allen, 149 U. S. 451 185
Cates v. Allen, 149 U. S. 451 195
Catlin v. Hoffman, 9 N. B. R. 342 362
Catlett v. McDonald, 13 La. 45 139
Cator v. Burke, 1 Bro. Ch. 434 41
Cauffman v. VanBuren, 136 N. Y. 252 299
Cavaroc v. Fournet, 28 La. Ann. 587 221
Central Tr. Co. v. Utah C. Ry. Co., 16 Utah 12 338
Central T. Co. v. Thurman, 94 Ga. 735 338
Central Nat'l Bank v. Graham, (Mich.) 76 N. W. 1042 318
Central Nat'l Bank v. Graham, (Mich.) 76 N. W. 1042 319
In re Central Bk., 6 N. B. R. 207 359
Central Nat. Bk. v. Seligman, 138 N. Y. 435 263
Cerney v. Pawlot, 66 Wis. 262 183
Chaffee v. Quidnick Co., 13 R. I. 442 37
Chaffee v. Quidnick Co., 13 R. I. 442 59
Chamberlain v. Gaillard, 26 Ala. 504 39
Chamberlain v. O'Brien, 46 Minn. 80 52
Chambers v. Smith, 3 App. Cas. H. of L. 795 42
Chambers v. Smith, 38 N. Y. St. Rep. 213 262

Page
Chandler v. Siddle, 10 N. B. R. 236; 3 Dill. 477..... 354
Chandler, Receiver et al. v. Siddle, 10 N. B. R. 236; 3 Dill. 477; 1 Cent. Law J. 341; Fed. Cas. 2, 594..... 343
Chandler v. Simmons, 97 Mass. 508..... 111
Chapman v. Bank of Cal., 97 Cal. 155..... 165
Chapman v. Bk. of Cal., 97 Cal. 155..... 166
Chapman v. Banker, etc., 128 Mass. 478..... 102
Chapman v. Banker, 128 Mass. 478..... 105
Chase v. Hinckley, 74 Me. 181..... 285
Chase v. Walters, 28 Ia. 460..... 248
Chase v. Redding, 13 Gray 418..... 110
Chatfield v. Boyle, 105 U. S. 231..... 161
Chautauqua Co. Bk. v. White, 6 N. Y. 236..... 192
Chautauqua Co. Bk. v. White, 6 N. Y. 236..... 280
Chautauqua Co. Bk. v. White, 2 Geld. 236..... 200
Chautauqua Co. Bank v. Risley, 19 N. Y. 369..... 15
Chautauqua Co. Bk. v. Risley, 19 N. Y. 369..... 240
Chautauqua Co. Bk. v. Risley, 19 N. Y. 369..... 328
Chealy v. Brewer, 7 Mass. 260..... 31
Chestnut v. Champion, 2 Hill S. C. Ch. 72..... 107
Chemical Nat'l Bk. v. Meyer, 1 Am. B. R. 565..... 390
Chittenden v. Brewster, 69 U. S. 191..... 19
Chillingworth v. Freeman, 67 Barb. N. Y. 379..... 23
Child v. Brace, 4 Paige Ch. 309..... 84
Child v. Brace, 4 Paige 309..... 170
Child v. Brace, 4 Paige Ch. 309..... 203
Child v. Brace, 4 Paige Ch. 309..... 204
Child v. Brace, 4 Paige 309..... 205
Child v. Brace, 4 Paige 309..... 209
Child v. Brace, 4 Paige Ch. 309..... 210
Childs v. N. B. Carlstein Co., 76 Fed. Rep. 86..... 186
Chicago & A. B. Co. v. Fowler, 55 Kan. 17..... 216
The Chicago D. &. V. R. Co. v. Town of St. Anne, 101 Ill. 151.. 128
Chicago, D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151..... 170
Chicago, D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151..... 174
Chicago, D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151..... 177
Chicago, D. & V. R. Co. v Town of St. Anne, 101 Ill. 151..... 193
Chicago Milwaukee R. R. Co. v. Keokuk Northern Line Packet Co., 108 Ill. 317..... 326
Chicago, M. & N. R. Co. v. Nat. E. & D. Co., 153 Ill. 70..... 91
Chicago v. Hall, 103 Ill. 342..... 55
Chipman v. Stern, 89 Ala. 207..... 261
Choteau v. Jones, 11 Ill. 300..... 136
Choteau v. Jones, 11 Ill. 300..... 213
Christmas v. Russell, 5 Wall. 290..... 215
Chrislip v. Teter, 43 W. Va. 356..... 157
In re Christy, 3 How. 292..... 366

Page
Christman v. Haner, 8 N. B. R. 528 387
Christian v. Atlantic, etc., R. Co., 133 U. S. 233 80
Cincinnati v. Hafer, 49 Ohio St. 60; 27 Ohio L. J. 151 237
Cipperly v. Rhodes, 53 Ill. 346 14
Citizens Bank v. Buddig, 65 Miss. 284 130
Citizens' Bank v. Williams, 128 N. Y. 77 256
City of Memphis v. Laske, 65 Tenn. 511 39
City of Peoria v. Kidder, 26 Ill. 351 181
Clark v. Anthony, 31 Ark. 546 213
Clark v. Raymond, 84 Ia. 251 52
Clark v. Raymond, 84 Ia. 251 67
Clark v. Raymond, 84 Ia. 257 169
Clark v. Raymond, 86 Ia. 661 195
Clark v. Raymond, 84 Ia. 251 199
Clark v. Bergenthal, 52 Wis. 103 205
Clark v. Bergenthal, 52 Wis. 103 231
Clarke v. Bert, 2 Kan. App. 407 40
Clark v. Binninger, 3 N. B. R. 528; S. C. 38 How. Pr. 341 341
Clark v. Davis, Han. Ch. 227 133
Clarke v. Earl, etc., Jac. 108 107
Clark v. Bever, 139 U. S. 96 179
Clark v. Krause, 2 Mackey, 559 151
Clark v. Shelton, 16 Ark. 474 19
Clarke v. Johnson, 2 Stock. 287 107
Clarke v. Webb, 2 Hen. & M. (Va.) 8 92
Clark v. Wilson, 127 Ill. 449 132
Clarkson v. De Peyster, 3 Paige 320 27
Clarkson v. De Peyster, 3 Paige Ch. 320 74
Clarkson v. De Peyster, 3 Paige Ch. 320 102
Clarkson v. De Peyster, 3 Paige Ch. 320 103
Clarkson v. De Peyster, 3 Paige 320 172
Clarkson v. De Peyster, 3 Paige Ch. 326 188
Clarkson v. De Peyster, 3 Paige Ch. 320 206
Clapp v. Peterson, 104 Ill. 26 164
Claflin v. Hamlin, 62 How. Pr. 284 59
Claflin v. Mess, 30 N. J. Eq. 211 114
Claflin v. Claflin, 149 Mass. 19 273
Claflin v. French, 28 N. J. Eq. 383 153
Clement v. Hawkins, 16 Miss. 339 85
Clements v. Moore, 73 U. S. 6 Wall. 299, 315 143
Clements v. Moore, 6 Wall. 299 152
Clements v. Moore, 6 Wall. 299 159
Clements v. Waters, 90 Ky. 96 24
Clough v. Thompson, 7 Gratt. 26 113
Clute v. Bool, 8 Paige (N. Y.) 83 270
Clute v. Bool, 8 Paige (N. Y.) 83 273
Clute v. Bool, 8 Paige Ch. 83 279

Page
Clymer v. Patterson, 52 N. J. Eq. 188 324
Coale v. Moline Plow Co., 134 Ill. 350 137
Coale v. Moline Plow Co., 134 Ill. 350 152
Coale v. Moline Plow Co., 134 Ill. 350 154
Coale v. Moline Plow Co., 134 Ill. 350 251
Cocks v. Varney, 45 N. J. Eq. 72 199
Cochran v. Fitch, 1 Sandf. Ch. 142 206
Cobb v. Cook, 49 Mich. 11 277
Codwise v. Gelston, 10 Johns. 507 240
Coddington v. Bispham, 36 N. J. Eq. 574 12
Coddington v. Executors, etc., 36 N. J. Eq. 574 107
Coddington v. Executors, etc., 36 N. J. Eq. 574 248
Coe v. Whitbeck, 11 Paige Ch. 42 187
Coe v. Whitbeck, 11 Paige Ch. 42 188
Cohn v. Goldman, 76 N. Y. 284 124
Cohen v. Meyers, 42 Ga. 46 298
Cohen v. Meyers, 42 Ga. 46 300
Colby v. Coates, 6 Cush. 558 199
Colburn v. Shay, 17 Ill. App. 289 18
Colburn v. Shay, 17 Ill. App. 289 68
Colburn v. Shay, 17 Ill. App. 289 213
Cole v. Marple, 98 Ill. 58 244
Cole v. Marple, 98 Ill. 58 245
Cole v. Cunningham, 133 U. S. 107 37
Cole v. Tyler, 65 N. Y. 73 154
Cole v. Butler, 43 Me. 401 55
Cole v. Lee, 45 N. J. Eq. 779 44
Cole v. Young, 24 Kan. 435 59
Coleman v. Howe, 154 Ill. 458 83
Coleman v. Burr, 93 N. Y. 17 262
Coleman v. Franklin, 26 Ga. 368 294
Coleman v. Roff, 45 N. J. L. 7 322
Columbus Watch Co. v. Hodenpyle, 135 N. Y. 430 34
Columbus Watch Co. v. Hodenpyl, 135 N. Y. 430 173
Columbus Watch Co. v. Hodenpyl, 135 N. Y. 430 215
In re Collins, 2 Am. B. R. 1 363
In re Collins, 2 Am. B. R. 1 361
In re Collins, 2 Am. B. R. 1 363
Collins v. Angell, 72 Cal. 513 228
Collins v. Angell, 72 Cal. 513 233
Collins v. Hydorn, 135 N. Y. 320 108
In re Collsi, 1 Am. B. R. 625 394
Coley v. Coley, 1 McCarter Ch. 350 159
Colton v. Bigelow, 41 N. J. L. 266 318
Commercial Bk. v. Meach, 7 Paige Ch. 448 84
Comstock v. Ragford, 9 Miss. 423 96

Page
Conant v. Sparks, 3 Edw. Ch. 104 131
Congdon v. Lee, 3 Edw. Ch. 304 33
Conkey v. Hawthorne, 69 Wis. 199 135
Conkey v. Knight, 104 Ill. 337 59
Conroy v. Woods, 13 Cal. 626 199
Consolidated Tankline Co. v. Kansas City, etc., Co., 45 Feb. Rep. 7 55
Consolidated T. L. Co. v. Kansas C. V. Co., 45 Feb. Rep. 7 185
Continental Nat'l Bank v. Myerle, 24 App. Div. 154; 48 N. Y. Supp. 718 308
Conover v. Conover, 1 N. J. Eq. 403 103
Conover v. Dumahant, 17 N. B. R. 558 343
Conover v. Jeffrey, 26 N. J. Eq. 36 213
Conro v. Port Henry Iron Co., 12 Barb. 27 102
Conro v. Port Henry Iron Co., 12 Barb. 27 103
Conway v. Ellison, 14 Ark. 360 129
Cook v. Waters, 9 N. B. R. 155 357
Cook v. Johnson, 12 N. J. Eq. 51 196
Cook v. Smith, 3 Sandf. Ch. 334 35
Cook v. New York Condensed Milk Co., 100 Ala. 580 105
Cook v. Ligon, 54 Miss. 652 112
Cooke v. Chase, 37 N. Y. Supp. 124 106
Cooney v. Cooney, 65 Barb. 524 329
Copous v. Kauffman, 8 Paige Ch. 583 116
Copous v. Kauffman, 8 Paige Ch. 583 117
Copous v. Kauffman, 8 Paige Ch. 583 229
Corbett v. Nutt, 10 Wall. 464 37
Corey v. Greene, 51 Me. 114 130
Corning v. White, 2 Paige Ch. 567 235
Corning v. White, 2 Paige Ch. 567 236
Corning v. White, 2 Paige 567 246
Corning v. White, 2 Paige 567 328
Cornell v. Radway, 22 Wis. 260 80
Cornman v. Sidle, 65 Minn. 84 178
Cornell v. McCann, 37 Md. 89 103
Cornell v. Radway, 22 Wis. 260 171
Cornell v. Radway, 22 Wis. 260 196
In re Cornwell, 6 N. B. R. 305 390
Cowing v. Green, 45 Barb. (N. Y.) 585 280
Cox v. Dunham, 8 N. J. Eq. 594 129
Cox v. Hale, 8 N. B. R. 562 386
Coyne v. Sayre, 54 N. J. Eq. 720 166
Coursey v. Morton, 132 N. Y. 556 262
County of Morgan v. Allen, 103 U. S. 498 179
Coughron v. Swift, 18 Ill. 414 181
In re Cozart, 3 N. B. R. 126 363
Crabb v. Curtis, 6 N. B. R. 139 382

Page
Cragie v. Hadley, 99 N. Y. 369 289
Lord Cranstown v. Johnston, 3 Ves. Jr. 170 59
Crain v. Kennedy, 85 Ill. 340 218
Crandall v. Lincoln, 52 Conn. 73 179
Crawford v. Kirksey, 50 Ala. 590 37
Crawford v. Rohrer, 59 Md. 599 54
Crawford v. Logan, 97 Ill. 396 112
Crevar v. Williams, 145 Ill. 625 148
Cribbedge v. Adams, 42 Ga. 124 170
Crimble v. Woodhead, 102 U. S. 647 384
Crippen v. Hudson, 3 Kernan 161 172
Crippen v. Hudson, 3 Kern. 161 173
Crippen v. Hudson, 13 N. Y. 161 179
Crippen v. Hudson, 13 N. Y. 161 203
Crippen v. Hudson, 13 N. Y. 161 216
Crippen v. Hudson, 13 N. Y. 161 217
Crippen v. Hudson, 13 N. Y. 161 239
Crocker v. Craig, 46 Me. 327 111
Crompton v. Anthony, 13 Allen 33 106
Crompton v. Anthony, 13 Allen 33 189
Crompton v. McDonald, 105 Mass. 423 190
Crook v. Jadis, 5 B. & Ad. 909 125
Cross v. Brown, 51 N. H. 486 111
In re Cronsin, 1 N. B. N. 474 368
Crosby v. Lumberman's Bk., Clark's Chy, 234 74
Crosby v. Morristown, & C. G. R. Co., Tenn. 42 S. W. 507 335
Crosby v. Morristown, etc., R. Co., 42 S. W. 507 337
Crossley v. Elworthy, L. R. 12 Eq. Cas. 158; 40 L. J. Ch. 480 220
Crouch v. First Nat. Bk., 156 Ill. 342 162
Crowell v. Cape Cod Ship Canal Co., 164 Mass. 235 38
Crowell v. Cape Cod Ship Canal Co., 164 Mass. 235 80
Crowninshield v. Kittridge, 7 Metc. 520 257
Crump v. Ingersoll, 47 Minn. 179 75
Cunningham v. Williams, 42 Ark. 170 135
Curtis v. Fox, 47 N. Y. 299 40
In re Curtis, 1 N. B. N. 163 378
In re Curtis, 1 N. B. N. 357 394
Curlee v. Rembert, 37 S. C. 214 265
Curling v. Hyde, 10 Mo. 374 199
Cutter v. Evans, 11 N. B. R. 448 372
Cutter v. Pollock, 4 N. Dak. 205 261
Cutter v. Perkins, 47 Me. 557 199
Cunningham v. Butler, 142 Mass. 47 301
Cunningham v. Butler, 142 Mass. 47 303
Cunningham v. Freeborn, 11 Wend. 240 262
Cunningham v. Pell, 6 Paige 655 96
Curran v. Olmstead, 101 Ala. 692 124

Page
Curry v. Glass, 25 N. J. Eq. 108 137
Cuyler v. Ensworth, 6 Paige Ch. 32 95
Cuyler v. Morland, 6 Paige Ch. 273 28
Cuyler v. Moreland, 6 Paige Ch. 273 73
Cuyler v. Moreland, 6 Paige Ch. 273 74
Cuyler v. Moreland, 6 Paige Ch. 273 203

D

In re Daggett, 8 N. B. R. 433 359
Dale v. Roosevelt, 5 Johns. Ch. 174 59
Dambmann v. White, 12 N. B. R. 438 357
Dambmann v. White, 12 N. B. R. 438 382
Damon v. Damon, 28 Wis. 510 299
Dana v. Haskell, 41 Me. 25 170
Dana v. Stanford, 10 Cal. 269 261
Danforth v. Dast, 4 Duer 101 125
Danforth v. National Chemical Co., 68 Minn. 308 331
Dansby v. Freiberg, 76 Tex. 463 267
Darrington v. Borland, 3 Port. Ala. 9 116
Darrington v. Borland, 3 Porter 9, 31 200
Darrington v. Borland, 3 Porter (Ala.) 9, 31 280
Dargan v. Waring, 11 Ala. 988 5
Darst v. Murphy, 119 Ill. 343 164
Daskam v. Neff, 79 Wis. 161 131
Davenport v. Kelly, 42 N. Y. 193 235
Davenport v. Kelly, 42 N. Y. 193 238
David v. Birchard, 53 Wis. 492 125
David v. Birchard, 53 Wis. 492 126
David v. Birchard, 53 Wis. 492 257
David v. Frowd, 1 Miln. & K. 200 101
Davidson v. Burke, 143 Ill. 139 146
Davidson v. Burke, 143 Ill. 139 163
Davidson v. Burke, 143 Ill. 139 239
Davidson v. Burke, 143 Ill. 139 241
Davison v. Davis, 125 U. S. 908 165
Davison v. Whittlesey, 1 MacArthur 163 35
Davis v. Anderson, 6 N. B. R. 154 364
Davis v. Bohle, 92 Fed. 325 374
Davis v. Bohle, 1 N. B. N. 216 378
Davis v. Bonney, 89 Va. 755 236
Davis v. Bonney, 89 Va. 755 238
Davis v. Lepold, 87 N. Y. 620 257
In re Davis, 1 Saw. 260 351
Davis v. Sheaver, 90 Wis. 250 308
Davis v. Werden, 13 Gray 305 42

Page
Davis v. Whipp, 48 S. W. 984 36
Dawson v. Holcomb, 1 Ohio, 135 199
Dawson v. Sims, 14 Or. 561 199
Dawson v. Vickery, 150 Ill. 398 164
Day v. Washburn, 65 U. S. 352 50
Day v. Washburn, 65 U. S. 352 (24 How.) 52
Day v. Washburn, 65 U. S. 352 180
Day v. Washburn, 65 U. S. 352 197
Day v. Washburn, 65 U. S. 352 240
Day v. Postal Tel. Co., 66 Md. 354 326
Dearborn v. Kemble, 5 Allen 372 41
Decker v. Wilson, 45 N. J. Eq. 772 262
Decker v. Decker, 108 N. Y. 128 20
Decker v. Decker, 108 N. Y. 128 213
Deering v. Tucker, 55 Me. 284 276
Degraw v. Clason, 11 Paige Ch. 136 42
Degraw v. Clason, 11 Paige Ch. 136 44
Degraw v. Clason, 11 Paige (N. Y.) 136 273
Degraw v. Clason, 11 Paige (N. Y.) 136 274
Degraw v. Clason, 11 Paige Ch. 136 277
Degraw v. Clason, 11 Paige Ch. 136 279
Degrauw v. Mechan, 48 N. J. Eq. 219 166
Dehon v. Foster, 4 Allen 545 37
Dehon v. Foster, 4 Allen 545 59
Dehon v. Foster, 4 Allen 545 60
Dehon v. Foster, 4 Allen 545 303
Demarest v. Terhune, 3 C. E. Green 532 159
Denton v. Noyes, 6 Johns. 296 180
Des Moines, etc., R. Co. v. Alley, 16 Fed. Rep. 732 126
De Louis v. Meek, 2 G. Green 55 102
De Klyn v. Watkins, 3 Sandf. Ch. 185 59
Deimel v. Brown, 35 Ill. App. 303 139
Derrick v. Lamar Ins. Co., 74 Ill. 404 161
Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305 177
Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305 181
Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305 185
Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305 199
Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305 219
Delta Bank v. Olive Finnie Grocery Co., 70 Miss. 868 92
Dewey v. Moyer, 72 N. Y. 70 30
Dewey v. Moyer, 72 N. Y. 70 102
Dewey v. Moyer, 72 N. Y. 70 201
Dewey v. Finn, 18 N. Y. Weekly Dig. 558 322
Dewey v. Long, 25 Vt. 564 72
Dexter v. McAfee, 163 Ill. 508 124
Dewey v. West Fairmont Gas-Coal Co., 123 U. S. 329 64
Dewey v. Eckert, 62 Ill. 218 177

Page
Dewey v. Eckert, 62 Ill. 218 181
Dewey v. Eckert, 62 Ill. 218 200
Dewey v. Eckert, 62 Ill. 218 219
De Clerq v. Jackson, 103 Ill. 658 291
In re De Long, 1 Am. B. R. 66 376
In re De Lue, 1 Am. B. R. 387 367
De Peyster v. Michael, 6 N. Y. 467 275
In re De Vore, 16 N. B. R. 56 353
De Witt v. Van Sickle, 29 N. J. Eq. 209, 215 126
Dhegetoft v. London Assurance Co., Mosely's Rept. 83 41
Dick v. Pitchford, 1 Dev. & Bat. Eq. 480 271
Dick v. Pitchford, 1 Dev. & Bat. Eq. 480 276
Dietz v. Atwood, 19 Ill. App. 96 31
Dillingham v. Kelly, 8 Tex. Cir. App. 113 332
Dilworth v. Curtis, 139 Ill. 508 29
Dilworth v. Curts, 139 Ill. 508 151
Dilworth v. Curts, 139 Ill. 508 152
Dilworth v. Curts, 139 Ill. 508 153
Dilworth v. Curts, 139 Ill. 508 158
Dillworth v. Curts, 139 Ill. 508 216
Dillworth v. Curts, 139 Ill. 508 247
Dillman v. Nadelhoffer, 162 Ill. 625 196
Dimmick v. W. Fred Quimby Co., N. J. Eq. 41 Atl. 101 333
Dingee v. Becker, 9 N. B. R. 508 356
Dinsmore v. Neresheimer, 32 Hun, 204 59
Disborough v. Outcalt, 1 N. J. Eq. 298 12
Disborough v. Outcalt, 1 N. J. Eq. 298 68
Disborough v. Outcalt, 1 N. J. Eq. 298 73
Disborough v. Outcalt, 1 N. J. Eq. 298 157
Disborough v. Outcalt, 1 N. J. Eq. 298 177
Disborough v. Outcalt, 1 N. J. Eq. 298 249
Disborough v. Outcalt, 1 N. J. Eq. 298 280
Dittman v. Weiss, Tex. Civ. App. Tex. 31 S. W. 67 19
Dittman v. Weiss Bros., 87 Tex. 614 195
Dix v. Briggs, 9 Paige Ch. 595 188
Dobson v. Pierce, 12 N. Y. 156 18
Dockray v. Mason, 48 Me. 178 73
Dodd v. Levy, 10 Mo. App. 121 5
Dodge v. Pyrolusite, M. Co., 69 Ga. 665 52
Dodge v. Griswold, 8 N. H. 425 5
Doerfler v. Schmidt, 64 Cal. 265 123
Doe Grimsby v. Ball, 11 M. & W. 531 113
Doggett v. Dill, 108 Ill. 560 248
Doherty v. Holiday, 137 Ind. 282 156
Dollard v. Taylor, 1 Jones & S. 496 317
Dollard v. Taylor, 1 Jones & S. 496 224
Dolson v. Kerr, 16 N. B. R. 405 362

Page
Dolton, etc., R. Co. v. McDaniel, 56 Ga. 191 54
Donovan v. Finn, Hopk. Ch. 59 34
Donovan v. Finn, Hopk. Ch. 59 12
Donovan v. Finn, Hopk. Ch. 59 277
Donley v. McKiernan, 62 Ala. 34 123
Dormueil v. Ward, 108 Ill. 216 171
Dormueil v. Ward, 108 Ill. 216 177
Dormueil v. Ward, 108 Ill. 216 181
Dormueil v. Ward, 108 Ill. 216 175
Dormueil v. Ward, 108 Ill. 216 193
Dormueil v. Ward, 108 Ill. 216 199
Dormueil v. Ward, 108 Ill. 216 202
Doolittle v. Bridgeman, 1 G. Greene 265 202
Doskam v. Neff, 79 Wis. 161 136
Doskam v. Neff, 79 Wis. 161 171
Doud v. Bonta Plate Glass Co., 28 Pitts. 6 L. J. 33
Dowbiggin v. Bourn, Young's Ex'c Rep. 111 95
Dows v. McMichael, 2 Paige 345 298
Dowden v. Wilson, 108 Ill. 257 141
Doyle v. Peckham, 9 R. I. 21 113
Drake v. Rice, 130 Mass. 410 72
Draper v. Hollings, 163 Mass. 127 105
Dreutzer v. Bell, 11 Wis. 119 14
Drewey v. Thacker, 3 Swanst. 529 107
Dreyfuss v. Charles Deale & Co., N. Y. 18 Misc. 551; 41 N. Y. Supp. 873 310
Drinkwater v. Drinkwater, 4 Mass. 354 111
Dudley v. Danforth, 61 N. Y. 626 267
Duerson v. Alsop, 27 Gratt. Va. 229 107
Dugan v. Cureton, 1 Ark. 31 69
Dummer v. Smedley, 110 Mich. 466 338
In re Duncan, 1 N. B. N. 340 385
Dunfee v. Childs, 30 S. E. 102 99
Dunham v. Cox, 10 N. J. Eq. 437 130
Dunham v. Cox, 10 N. J. Eq. 437 178
Dunham v. Cox, 2 Stock. 437 182
Dunham v. Cox, 2 Stock. 437 211
Dunham v. Byrnes, 36 Minn. 106 224
Dunham v. Byrnes, 36 Minn. 106 317
Dunham v. Byrnes, 36 Minn. 106 321
Dunham v. Hyde Park, 75 Ill. 371 149
In re Dunkle, 7 N. B. R. 72 386
Dunlop v. Byers, 110 Mich. 109 322
Dunlevy v. Tallmadge, 32 N. Y. 457 170
Dunlevy v. Tallmadge, 32 N. Y. 457 188
Dunlevy v. Tallmadge, 32 N. Y. 457 189
Dunlevy v. Tallmadge, 32 N. Y. 457 195

Page
Dunlevy v. Tallmadge, 32 N. Y. 457 205
Dunlevy v. Tallmadge, 32 N. Y. 457 216
Dunlevy v. Tallmadge, 32 N. Y. 457 239
Dunphy v. Kleinsmith, 78 U. S. 610 73
Dunphy v. Kleinsmith 78 U. S. 5
Dunphy v. Kleinsmith, 78 U. S. 610 159
Dunton v. McCook, 93 Iowa 258 46
Durand v. Gray, 129 Ill. 9 65
Durand v. Gray, 129 Ill. 9 66
Durand v. Gray, 129 Ill. 9 131
Durand v. Gray, 129 Ill. 9 170
Durand v. Gray, 129 Ill. 9 185
Durand v. Gray, 129 Ill. 9 203
Durand v. Gray, 129 Ill. 9 205
Durand v. Gray, 129 Ill. 9 209
Durand v. Gray, 129 Ill. 9 228
Dutton v. Thomas, 97 Mich. 93 133
Dutton v. Thomas, 97 Mich. 93 308
Dutcher v. Marine Nat. Bk., 12 Blatchf. 435 55
Dutcher v. Wright, 16 N. B. R. 331 389
Duval v. Duval, 153 Ill. 49 218
Duval v. Marshall, 30 Ark. 230 312
Dygert v. Remerschnider, 32 N. Y. 629 126

E

Eades v. Mason, 16 Ill. App. 545 202
Eager v. Price, 2 Paige Ch. 334 34
Eager v. Price, 2 Paige Ch. 333 43
Eager v. Price, 2 Paige Ch. 333 241
Eames v. Doris, 102 Ill. 350 7
Eameston v. Lyde, 1 Paige Ch. 637 95
Eameston v. Lyde, 1 Paige Ch. 637 235
Earl of Chesterfield v. Janssen, 2 Ves. Sr. 125 200
Earl of Chesterfield v. Janssen, 2 Ves. Sr. 125 280
Earl of Derby v. Duke of Athol, 1 Ves. Sr. 202 59
Earl v. Grove, 92 Mich. 285 200
Earl of Kildare v. Eustace, 1 Vern. 419 59
Early Times Dist. Co. v. Zeiger, N. M. 49 Pac. 723 25
Early Times Distilling Co. v. Zeiger, 49 Pac. Rep. 723 185
Eastman v. Foster, 8 Metc. 19 244
Eastern Electric Cable Co. v. Great Western Mfg. Co., 164 Mass. 274, 41 N. E. 295 33
In re Easley, 1 Am. B. R. 175 362
In re Easley, 1 N. B. N. 230 365
In re Easley, 93 Fed. 419 374

Page
Eaton v. Patterson, 2 S. & P. (Ala.) 9 238
Edgar v. Clevenger, 2 N. J. Eq. 258 170
Edgar v. Clevenger, 2 N. J. Eq. 258 192
Edgar v. Clevenger, 2 N. J. Eq. 258 215
Edgell v. Haywood, 3 Atk. 352 73
Edgell v. Haywood, 3 Atk. 352 328
Edgell v. Hart, 9 N. Y. 213 262
Edmeston v. Lyde, 1 Paige Ch. 637, 640 50
Edmeston v. Lyde, 1 Paige Ch. 637 73
Edmeston v. Lyde, 1 Paige Ch. 637 88
Edmeston v. Lyde, 1 Paige Ch. 637 157
Edmeston v. Lyde, 1 Paige Ch. 637 236
Edmeston v. Lyde, 1 Paige 637 238
Edmeston v. Lyde, 1 Paige Ch. 637 244
Edmeston v. Lyde, 1 Paige Ch. 637 246
Edmondson v. Hyde, 7 N. B. R. 1 370
Edmonston v. McLoud, 16 N. Y. 543 241
Edmonston v. McLoud, 16 N. Y. 544 251
Edwards v. Woodruff, 90 N. Y. 396 81
Eikenberry v. Edwards, 67 Ia. 619 225
Elfelt v. Hart, 1 McCrary C. Ct. 11 285
Eliott v. Merchants' Exch'g, 14 Mo. App. 234 5
Ellsworth v. Cuyler, 9 Paige 418 35
Ellsworth v. Cook, 8 Paige Ch. 643 274
Elliot v. Pontius, 136 Ind. 64 102
Ellington v. Moore, 4 Va. Law. Reg. 608 105
Elmore v. Spear, 27 Ga. 193 106
Elwell v. Johnson, 3 Hun. 558 123
In re Empire Metallic Bedstead Co., 1 Am. B. R. 136 342
In re Empire Metallic Bedstead Co., 1 Am. B. R. 136 379
In re Empire Metallic Bedstead Co., 1 Am. B. R. 136 390
Emmons v. Barton, 109 Cal. 662 112
Emmons v. Cummings, 7 Humph. 279 110
Emery v. Bidwell, 140 Mass. 271 42
Embry v. Palmer, 107 U. S. 3 217
Emery v. Cochran, 82 Ill. 65 129
Engel v. Scheuerman, 40 Ga. 206 59
Englebert v. Blanyot, 2 Whart. 240 113
England v. Russell C. C. S. D. Ohio 71 Fed. Rep. 818 186
England v. Russell, 71 Fed. Rep. 818 265
Eno v. Colder, 14 Rich. Eq. S. C. 154 290
Enos v. Hunter, 4 Gilm. 211 60
Erb v. Popritz, 59 Kan. 264 333
Erdall v. Atwood, 79 Wis. 1 321
Ernst v. Shinkle, 95 Ky. 608 273
Essex Co. v. Lawrence, Etc., 10 Allen 352 54
Estey v. Fuller, 82 Ia. 678 224

Page
Estey v. Fuller Imp. Co., 82 Ia. 678.... 225
Estey v. Fuller, 82 Ia. 678.... 226
Estes v. Wilcox, 67 N. Y. 264.... 172
Estes v. Wilcox, 67 N. Y. 264.... 183
Estes v. Wilcox, 67 N. Y. 264.... 188
Estes v. Wilcox, 67 N. Y. 264.... 194
Estes v. Gunter, 122 U. S. 450.... 259
Estabrook v. Messersmith, 18 Wis. 545.... 112
In re Etheridge Furn. Co., 1 Am. B. R. 112.... 340
Eustace v. Lloyd, 25 Week. Rep. 211.... 303
Evans v. Laughton, 69 Wis. 138.... 187
Evans v. Virgin, 69 Wis. 148.... 198
Everett v. Read, 3 N. H. 55.... 111
Everett v. Everett, 48 N. Y. 218.... 183
Everett v. Peyton (App. Div.) 55 N. Y. Supp. 464.... 277
Ewing v. Ainsworth, 53 Ill. 464.... 189
Exchange Bk. of Macon v. H. B. Claflin & Co., 100 Ga. 640.... 314
Exchange Bk. v. Macon Construction Co., 97 Ga. 1.... 334
Eyster v. Gaff, 13 N. B. R. 546, 91 U. S. 521.... 356

F

Faber v. Matz, 86 Wis. 370.... 213
Faber v. Matz, 86 Wis. 370.... 217
Faber v. Matz, 86 Wis. 370.... 225
Fairbairn v. Middlemiss, 47 Mich. 372.... 176
Fairbairn v. Middlemiss, 47 Mich. 372.... 270
Faivre v. Gillman, 84 Ia. 573.... 96
Falconer v. Freeman, 4 Sandf. Ch. 565.... 299
Falmouth Nat'l Bank v. Cape Cod Ship Canal Co., 166 Mass. 550.... 309
Fall v. Chambers, Mosely's Rept. 193.... 41
Farmers' & Merchants' Nat'l Bk. v. Waco Elec. R. & L. Co., Tex. Civ. App. 36 S. W. 131.... 333
Farmers', Etc., v. Needles, 52 Mo. 17.... 326
Farmers' & C., N. & B. v. Noxon, 45 N. Y. 762.... 288
Farmers' Nat. Bk. v. Sperling, 113 Ill. 273.... 89
Farmers' Loan & Trust Co. v. Waterman, 106 U. S. 265.... 64
Farmers' L. & T. Co. v. Baker, 20 Misc. N. Y. 387.... 322
Farmer v. Yates, 23 Gratt. 145.... 155
Farrar v. Haselden, 9 Rich. (S. C.) Eq. 331.... 88
Farrar v. Haselden, 9 Rich. (S. C.) Eq. 331.... 93
Farrar v. Haselden, 9 Rich. Eq. 331.... 200
Farley v. Carpenter, 27 Hun. 359.... 126
Farley v. Shippen, 1 Wythe, 254.... 59
Farnham v. Campbell, 10 Paige Ch. 598.... 33

Page
Farnham v. Campbell, 10 Paige Ch. 598 236
Farnsworth v. Strasler, 12 Ill. 482 5
Farnsworth v. Strasler, 12 Ill. 482 21
Farnsworth v. Strasler, 12 Ill. 482 190
Farnsworth v. Strasler, 12 Ill. 482 196
Farnsworth v. Strasler, 12 Ill. 482 201
Farned v. Harris, 11 S. & M. 366, 371 195
Farquaharson v. Kimball, 9 Abb. Pr. 385 n 227
Farquaharson v. Kimball, 18 How. Pr. 33 228
Farwell v. Hilbert, 91 Wis. 437 215
John V. Farwell & Co. v. Norton, 77 Ill. App. 685 25
Farwell v. Importers' Nat. Bk., 90 N. Y. 483 320
Farwell v. Nilsson, 133 Ill. 45 256
Farwell v. Nilsson, 133 Ill. 45 261
Farrell v. Ledwell, 21 Wis. 182 230
Fawcett v. Supreme Sitting O. of I. H., 64 Conn. 170 250
Feldenheimer v. Tressel, 6 Dak. 265 73
Fellows v. Fellows, 4 Cow. 682 82
Fellows v. Fellows, 4 Cow. 682 104
Fellows v. Fellows, 4 Cow. 682 143
Fellows v. Stevens, 24 Wend. 294 257
In re Fellerath, 1 N. B. N. 292 363
In re Fellerath, 2 Am. B. R. 40 366
In re Fellerath, 2 Am. B. R. 40 378
Fenn v. Holme, 21 How. 481 174
Fennerman v. Leonard, 7 Allen 54 180
Fenton v. Flagg, 24 How. Pr. 499 227
Ferguson v. Peckham, 6 N. B. R. 569 351
Fichout v. Cilley, 3 Vt. 415 180
Fidelity Ins. Co. v. Huntington, 117 U. S. 280 116
Field v. Andrader, 106 Cal. 107 39
Field v. Chapman, 15 Abb. Pr. 434 227
Field v. Gibbs, Peters C. C. R. 155 180
Field v. Mayor, 6 N. Y. 179 18
Filkins v. Nunnemacher, 81 Wis. 91 323
Filkins v. Nunnemacher, 81 Wis. 91 326
Filkins v. Nunnemacher, 81 Wis. 91 328
Filkins v. Nunnemacher, 81 Wis. 91 329
Finley v. Bank of U. S., 24 U. S. 304 101
First Nat. Bk. v. Gage, 79 Ill. 207 208
F. N. Bank v. Gage, 79 Ill. 207 227
First N. Bk. v. Gage, 79 Ill. 207 298
First Nat. Bk. v. Gage, 93 Ill. 172 241
First Nat. Bk. v. Gibson, Neb. 77 N. W. 662 152
First Nat. Bk. of Marshall v. Hosmer, 48 Mich. 200 29
First Nat. Bk. of Marshall v. Hosmer, 48 Mich. 200 219
First Nat. Bank v. Randall, 38 Atl. 1055 214

Page
First Nat. Bank v. Steinway (C. C. W. D. Pa.) 77 Fed. Rep. 661. 216
First Nat. Bk. v. Shuler, 153 N. Y. 163 82
First Nat. Bk. v. Shuler, 153 N. Y. 163 90
First Nat. Bk. v. Shuler, 153 N. Y. 163 235
First Nat. Bk. v. Peoria Watch Co., 77 Ill. App. 663 202
In re Fisher, 1 Am. B. R. 557 394
Fisher v. Boody, 1 Curtis C. C. 206 151
Fisher v. Herron, 22 Neb. 183 19
Fisher v. Herron, 22 Neb. 183 107
Fisher v. Taylor, 2 Rawle 33 271
Fisher v. Worth, 1 Busb. (N. C.) Eq. 63 88
Fitzburgh v. Everingham, 6 Paige Ch. 29 144
Fitzgerald v. Forristal, 48 Ill. 228 213
Fitzpatrick v. Beatty, 1 Gilm. 454 128
Flagler v. Blunt, 32 N. J. Eq. 518 111
Flaherty v. McCormick, 113 Ill. 538 195
Flash v. Wilkerson, 22 Fed. Rep. 689 101
Fleming v. Grafton, 54 Miss. 79 170
Fleming v. Grafton, 54 Miss. 79 171
Fletcher v. Holmes, 40 Me. 364 111
Flower v. Cornish, 25 Min. 473 112
Fogg v. Blair, 139 U. S. 118 179
Fogg v. United Order of Golden Lion, 159 Mass. 9 244
Fogarty v. Burke, 2 Drury & Warren 580 66
In re Folf, 1 Am. B. R. 22 381
Forbes v. Lathrop, 137 Mass. 523 35
Forbes v. Smith, 8 Ired. (N. C.) Eq. 30 274
Forbes v. Waller, 25 N. Y. 430 208
Forbes v. Waller, 25 N. Y. 430 210
Ford v. Williams, 24 N. Y. 359 262
Ford v. Holbrook, 50 Ill. App. 547 250
In re Forsythe, 7 N. B. R. 174 386
Fort Payne Bank v. Alabama, Etc., Co., 103 Ala. 358 179
Fort Stanwix Bk. v. Leggett, 51 N. Y. 552 27
Fort Stanwix Bk. v. Leggett, 51 N. Y. 552 30
Fort Stanwix Bk. v. Leggett, 51 N. Y. 552 117
Fort Stanwix Bk. v. Leggett, 51 N. Y. 552 201
Foster v. Bank of Abingdon, 88 Fed. Rep. 604 30
Foster v. Bank of Abingdon (C. C. W. D. Va.) 68 Fed. Rep. 723.. 98
Foster v. Foster, 133 Mass. 179 33
Foster v. Foster, 56 Vt. 540 71
Foster v. Mott, 34 N. Y. 253 198
Foster v. Varsall, 3 Atk. 589 59
Fourth Nat. Bank v. Stout, 113 U. S. 684 64
In re Fowler, 1 Am. B. R. 637 351
Fowler's Appeal, 87 Pa. 449 6
Fowler's Appeal, 87 Pa. 449 62

Page
Fox v. Moyer, 54 N. Y. 125 82
Fox v. Moyer, 54 N. Y. 125 170
Fox v. Moyer, 54 N. Y. 125 176
Fox v. Moyer, 54 N. Y. 125 203
Fox v. Curtis, 176 Pa. 52 317
Fox v. Heath, 16 Abb. N. Y. Pr. 163 130
Francis v. Lawrence, 48 N. J. Eq. 508 ..... 198, 199
Francis v. New York Commercial Co., 54 U. S. App. 663, 83 Fed. Rep. 769 300
Franklin Co. Nat. Bk. v. First Nat. Bk. 138 Mass. 518 244
Franklin Nat'l Bank v. Whitehead, 149 Ind. 560 321
Frank v. Robinson, 96 N. C. 28 263
Frazier v. McWilliams, 19 N. J. Eq. 316 274
Frazier v. Barnum, 19 N. J. Eq. 316 273
Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710 50
Freedmans, Etc., Co. v. Earle, 110 U. S. 710 68
Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710 73
Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710 201
Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710 240
Freeholders v. Henry, 41 N. J. Eq. 388 274
In re Freund, 1 Am. B. R. 25 394
Freeland v. Dazey, 25 Ill. 294 6
Freeland v. Dazey, 25 Ill. 294 218
Freeland v. Freeland, 102 Mass. 475 113
Freeman v. Howe, 65 U. S. 450 64
Freeman v. Pullen, 24 So. 57 (Ala.) 85
Freeman v. Pullen, 24 So. 57 203
Freeman v. Stuart, 24 So. 31 (Ala.) 91
Freeman v. Stuart, 24 So. 31 Ala. 316
French v. Motley, 63 Me. 326 261
French v. Marshall, 136 Mass. 564 111
In re Friedman, 1 Am. B. R. 510 367
Friend v. Powers, 93 Ala. 114 54
Frisbey v. Thayer, 25 W. R. 396 170
Fryrear v. Lawrence, 5 Gil. 325 144
Frost v. Mott, 34 N. Y. 253 299
Frothingham v. Hodenpyl, 48 N. Y. S. R. 449 170
Frothingham v. Hodenpyl, 135 N. Y. 630 216
Fry v. Kruse, 43 Ark. 142 102
Fry v. Kruse, 43 Ark. 142 103
Ex parte Fryer, L. R. 17 Q. B. Div. 718 331
Fuller v. Taylor, 6 N. J. Eq. 301 145
Fuller v. Taylor, 6 N. J. Eq. 301 299
Fuller v. Taylor, 6 N. J. Eq. 301 312
In re Fuller, 1 Saw. 143 351
In re Fuller, 4 N. B. R. 29 355
In re Fuller, 4 N. B. R. 29 375

Page
Fumin v. Malloy, 1 Jones & S. 382 329
Funk v. Lawson, 12 Ill. App. 229 278
Furbush v. Collingwood, 13 R. I. 720 17
Fusze v. Stern, 17 Ill. App. 429 196

G

Gaffray v. Rabb, 72 Ia. 335 339
Galusha v. Galusha, 138 N. Y. 272 90
Galatian v. Erwin, Hopk. Ch. 48 18
Galatian v. Erwin, Hopk. Ch. 48 148
Galloway v. Hamilton, 68 Wis. 651 171
Galiher v. Cadwell, 145 U. S. 368; 12 Sup. Ct. 873 165
Gallagher v. Goldfrank, 75 Tex. 562 263
Gallman v. Perrie, 47 Miss. 131 71
In re Garson, 1 N. B. N. 315 368
Garland v. Garland, 87 Va. 758 273
Garretson v. Brown, 26 N. J. L. 425 112
Garrison v. Texas & Pac. R. Co., 10 Tex. Civil App. 136 331
Garrett v. Plow Co., 70 Ia. 697 249
In re Garett, 11 N. B. R. 493 355
In re Garrett, Fed. Cas: No. 5252 391
Garvin v. Squires, 9 Ark. 533 62
Garvin v. Stewart's Heirs, 59 Ill. 229 138
Gardner v. Gardner, 22 Wend. 526 34
Gardner v. Gardner, 17 R. I. 751 192
Gardner v. Caldwell, 16 Mont. 221 339
Gardner v. Smith, 29 Barb. 68 329
Garfield v. Hatmaker, 15 N. Y. 475 72
Garfield v. Hatmaker, 15 N. Y. 475 183
Garfield v. Hatmaker, 15 N. Y. 475 253
Gates v. Young, 17 N. Y. Week. Dig. 551 225
Gassaway v. Heidenheimer, Tex. 37 S. W. 343 314
Gates v. Boomer, 17 Wis. 470 27
Gates v. Boomer, 17 Wis. 456 102
Gates v. Boomer, 17 Wis. 455 171
Gauler v. Wohlers, 12 Ill. App. 594 132
Gaylords v. Kelshaw, 68 U. S. 81 81
Gedge v. Traill, 1 Russ & M. 281 n 86
Geery v. Geery, 63 N. Y. 252 170
Geery v. Geery, 63 N. Y. 252 178
Genesee River Bk. v. Mead, 92 N. Y. 637 126
Geny's Appeal, 17 N. B. R. 196 377
George M. West Co. v. Lea Bros., 1 N. B. N. 409 379
George v. Williamson, 26 Mo. 190 177
George v. Williamson, 26 Mo. 190 236

Page
George v. St. Louis, Etc. Co., 44 Fed. Rep. 117 97
George v. St. Louis Cable & W. R. Co. C. C. E. D. Mo. 44 Fed. Rep. 117 156
German-American Seminary v. Saenger, 66 Mich. 249 236
Gere v. Dibble, 17 How. Pr. 31 102
Geringer v. Heinlein (Ohio C. P.) 29 Ohio L. J. 339 (Week. L. Bul.) 45
Getzler v. Saroni, 18 Ill. 511 52
Getzler v. Saroni, 18 Ill. 511 66
Getzler v. Saroni, 18 Ill. 511 181
Getzler v. Saroni, 18 Ill. 511 199
Getzler v. Saroni, 18 Ill. 511 201
Gettleman v. Gitz, 78 Wis. 439 184
Gibson v. Gibson, 82 Ill. 61 218
Gibson v. Gibson, 46 Wis. 449 299
Gibson v. Shufeldt, 122 U. S. 27 161
Gibbs v. David, L. R. 20 Equity, 373 314
Gibbs v. Thayer, 6 Cush. 30 113
Giddings v. Sears, 115 Mass. 505 260
Gilbert v. Stockman, 81 Wis. 602 170
Gilbert v. Stockton, 81 Wis. 602 171
Gilbert v. Stockman, 81 Wis. 602 183
Gilbert v. Stockman, 81 Wis. 602 204
Gilbert v. Stockman, 81 Wis. 602 216
Gilbert v. Lewis, 1 De G. J. & S. 38 123
Gilbert v. Lewis, 1 De G. J. & S. 38 128
Gilbert v. Washington Beneficial Endowment Assn., 10 App. Cas. D. C. 316 103
Gill v. Weston, 110 Pa. St. 305 299
Gillett v. Moody, 3 Comst. 479 323
Gillett v. Bate, 86 N. Y. 87 32
Gillespie v. Alexander, 3 Russ. 130 101
Gilman v. Ketcham, 84 Wis. 60 326
Ginn v. Brown, 14 R. I. 524 133
Gladwin v. Garrison, 13 Cal. 330 261
Gleason v. Gage, 7 Paige Chy. 121 112
Gleason v. Gage, 7 Paige 121 178
Gleason v. Gage, 7 Paige Ch. 121 204
Gleason v. Fayerweather, 4 Gray. 348 276
Glenn v. Williams, 60 Md. 93 54
Glenn v. Williams, 60 Md. 93 214
Glenn v. Semple, 80 Ala. 159 54
Glenny v. Langdon, 98 U. S. 20 18
Glenny v. Langdon, 98 U. S. 20 321
Glenny v. Langdon, 98 U. S. 20 384
Globe Phosphate Co. v. Pinson, 52 S. C. 185 324
In re Globe Cycle Works, 1 N. B. N. 421 373

Page
Globe Cycle Works, 1 N. B. N. 421 374
In re Globe Cycle Works, 1 N. B. N. 421 376
Glover v. Lee, 140 Ill. 102 260
Glover v. St. Louis Mutual Bond Invest. Co., 138 Mo. 408 310
Goddard v. Weaver, 6 N. B. R. 440 355
Godden v. Kimmell, 99 U. S. 201 165
Godfrey v. Terry, 97 U. S. 171 54
Goembel v. Arnett, 100 Ill. 34 180
Gogebic Inv. Co. v. Iron Chief, Etc., Co., 8 Wis. 427 179
In re Gollison, 5 N. B. R. 353 395
Golson v. Nieheff, 5 N. B. R. 56 363
Goldberg v. Cohen, 119 N. C. 68 106
In re Goldstein, 1 N. B. N. 422 387
Goncelier v. Forst, 4 Minn. 1 180
Goodier v. Barnes, 1 N. B. N. 383 356
Goodman v. Kopperl, 67 Ill. App. 42 218
Goodman v. Harvey, 4 Ad. & Ellis, 870 125
Goodall v. Tuthill, 7 N. B. R. 193; 3 Biss. 219 356
Goodwin v. Wertheimer, 99 N. Y. 149 288
Goodwin v. Wertheimer, 99 N. Y. 149 289
Goodwin v. Einstein, 51 How. Pr. 9 34
Gore v. Kramer, 117 Ill. 176 174
Gore v. Kramer, 117 Ill. 176 181
Gore v. Kramer, 117 Ill. 176 185
Gore v. Kramer, 117 Ill. 176 199
Gore v. Kramer, 117 Ill. 176, 182 219
Gordon v. Lowell, 21 Me. 251 238
Gordon v. Lowell, 21 Me. 251 244
Gordon v. Lowell, 21 Me. 251 246
Gordon v. Worthley, 48 Ia. 429 169
Gordon v. Worthley, 48 Ia. 429 195
Gordon v. Worthley, 48 Ia. 76 199
Gordon v. Anthony, 16 Blatchf. C. C. 234 41
Gorham v. Mutual Aid Soc., 161 Mass. 357 244
Gorham v. Gorham, 3 Barb. Ch. 24 111
Gorton v. Massey, 12 Minn. 145 180
Gormerly v. Chapman, 51 Ga. 421 238
Gould v. Cayuga County Bank, 99 N. Y. 333 285
Gould v. Dodge, 30 Wis. 621 229
Gould v. Steinburg, 84 Ill. 170 63
Gould v. Tryon, Walk. Chy. 353 66
Gowell v. Gates, 79 Ia. 632 102
Gracey v. Davis, 3 Strobh. Eq. 55 240
Graff v. Bonnett, 31 N. Y. 9 270
Graff v. Bonnett, 31 N. Y. 9 273
Graff v. Bonnett, 31 N. Y. 9 329
Graham v. La Crosse & M. R. Co., 10 Wis. 459 226

Page
Graham v. Maxwell, 1 MacN. & G. 71 303
Grampton v. Anthony, 13 Allen 33 105
Granby v. Amherst, 7 Mass. 1 111
Grant v. Walsh, 145 N. Y. 502 288
Grant v. Southern Contract Co. Ky. 47 S. W. 1091 31
Grand Trunk R. Co. v. Vermont R. Co., C. C. D. Vt. 85 Fed. Rep. 87 26
Grand Trunk R. Co. v. Central Vt. R. Co., 88 Fed. Rep. 636 334
Grand Trunk R. Co. v. Central Vt. R. Co., 88 Fed. Rep. 636 335
In re Grahs, 1 Am. B. R. 465 351
In re Grahs, 1 Am. B. R. 465 381
Gray v. Blum, 55 N. J. Eq. 553 330
Gray v. Corbit, 4 Del. Ch. 135 273
Gray v. Galpin, 98 Cal. 633 129
Gray v. May, 16 Ohio 66 86
Gray v. Reynolds, 55 N. J. Eq. 501 332
Graves v. Dugan, 6 Dana 331 47
Gray v. Schenck, 4 N. Y. 460 81
Graydon v. Church, 7 Mich. 36 326
Great Falls Mfg. Co. v. Worster, 23 N. H. 462 59
Great Western Tel. Co. v. Gray, 122 Ill. 630 54
Green's Administratrix v. Creighton, 64 U. S. 90 63
Greens Admx. v. Creighton, 64 U. S. 90 291
Green v. Hicks, 1 Barb. Ch. 309 81
Greene v. Keene, 14 R. I. 388 34
Green v. Spicer, 1 R. & M. 395 271
Green v. Tantum, 19 N. J. Eq. 105 34
Green v. Van Buskirk, 5 Wall. 307; 7 Wall. 139 301
Green v. Tantum, 19 N. J. Eq. 105 178
Green v. Tantum, 19 N. J. Eq. 105 274
Greene v. Staines, 1 Heisk 582 203
Gregory v. Rosenkrans, 78 Wis. 451 216
Greenway v. Thomas, 14 Ill. 271 52
Greenway v. Thomas, 14 Ill. 271 66
Greenway v. Thomas, 14 Ill. 271 174
Greenway v. Thomas, 14 Ill. 271 175
Greenway v. Thomas, 14 Ill. 271 177
Greenway v. Thomas, 14 Ill. 271 180
Greenway v. Thomas, 14 Ill. 271 181
Greenway v. Thomas, 14 Ill. 271 195
Greenway v. Thomas, 14 Ill. 271 197
Greenway v. Thomas, 14 Ill. 271 199
Greenway v. Thomas, 14 Ill. 271 200
Greenway v. Thomas, 14 Ill. 271 201
Greenway v. Thomas, 14 Ill. 271 219
In re Greenville, 9 N. B. R. 29 360
Greig v. Somerville, 1 Russ. & M. 338 101

Page
Greig v. Russell, 115 Ill. 483 148
Griffith v. Lansdale, 53 Ark. 71 304
Griffith v. Griffith, 9 Paige 315 140
Griffith v. Griffith, 9 Paige Ch. 315 237
Griffin v. Mitcher, 57 Me. 270 130
Griffin v. Mitcher, 57 Me. 270 184
In re Grimes, 1 N. B. N. 339 392
In re Grimes, 1 N. B. N. 426 393
Griswold v. Sundback, 4 S. D. 441 189
Grosvenor v. Allen, 9 Paige Ch. 74 36
Grover v. Wakeman, 11 Wend. 187 263
Guerrant v. Towler, 1 H. & M. 5 59
Gullickson v. Madsen, 87 Wis. 19 25
Gullickson v. Madsen, 87 Wis. 19 36
Gullickson v. Madsen, 87 Wis. 19 74
Guiliander v. Howell, 35 N. Y. 657 206
Gurkill v. Durdin, 2 Ball & Beatty, 167 141
Gutch v. Fitch, 34 Fed. Rep. 566 55
In re Gutwillig, 90 Fed. Rep. 481 374
In re Gutwillig, 1 Am. B. R. 388 376
In re Gutwilling, 1 Am. B. R. 388 380
In re Gutwilling, 1 Am. B. R. 78 381
Gwyer v. Figgins, 37 Ia. 517 169
Gwyer v. Figgins, 37 Ia. 517 195
Gwyer v. Figgens, 37 Ia. 517 199

H

Haak's Appeal, 100 Pa. 59 188
Hackley v. Muskegon Cir. J., 58 Mich. 854 391
Hadden v. Spader, 20 Johns. 554 72
Hadden v. Spader, 20 Johns. 554 170
Hadden v. Spader, 20 Johns. 554 175
Hadden v. Spader, 20 Johns. 554 208
Hadden v. Spader, 20 Johns. 554 277
Haddon v. Haddon, L. R. 18 Q. B. Div. 778 391
In re Haefer, 1 N. B. R. 163 353
Hagan v. Walker, 55 U. S. 29 5
Hagan v. Walker, 55 U. S. 29 21
Hagan v. Walker, 55 U. S. 29 86
Hagan v. Walker, 55 U. S. 29 91
Hagan v. Walker, 55 U. S. 29 193
Hagan v. Walker, 55 U. S. 29 200
Hagan v. Walker, 55 U. S. 29 212
Hagan v. Walker, 55 U. S. 29 280
Haggarty v. Pittman, 1 Paige Ch. 298 312
Haggerty v. Nixon, 26 N. J. Eq. 42 72
Haggerty v. Nixon, 26 N. J. Eq. 42 186
Hager v. Adams, 70 Ia. 746 304

Page
Hager v. Shindler, 29 Cal. 47 113
Haines v. Hollister, 64 N. Y. 1 117
Hale v. Danforth, 40 Wis. 382 230
Hall v. Black, 21 Ill. App. 293 88
Hall v. Brewer, 40 Ark. 433 291
Hall v. Stryker, 27 N. Y. 596 198
Hall v. Stryker, 27 N. Y. 596 299
Hall v. Green, 60 Miss. 47 188
Hall v. Hoxsey, 84 Ill. 616 112
Hall v. Joiner, 1 S. C. 186, (N. S.) 5
Hall v. Joiner, 1 S. C. 186 300
Hall v. Tufts, 18 Pick. 455 276
Hall v. Wager, 5 N. B. R. 181 370
Hall v. Wager, 5 N. B. R. 181 389
Hall v. Williams, 120 Mass. 344 42
Hall v. Williams, 126 Mass. 344 271
Re Hallett, 13 Ch. Div. 696 ..... 230, 281
Hallett v. Hallett, 2 Paige 15 80
Hallett v. Hallett, 2 Paige 15 89
Hallett v. Hallett, 2 Paige 15 90
Hallett v. Hallett, 2 Paige Ch. 15 91
Hallett v. Thompson, 5 Paige 583 270
Hallett v. Thompson, 5 Paige 583 271
Hallett v. Thompson, 5 Paige 583 291
Hallorn v. Trum, 125 Ill. 247 81
Hallorn v. Trum, 125 Ill. 247 89
Hallorn v. Trum, 125 Ill. 247 140
Hallorn v. Trum, 125 Ill. 247 177
Hallorn v. Trum, 125 Ill. 247 239
Hallorn v. Trum, 125 Ill. 247 241
Hallowell v. Bayliss, 10 Ohio St. 536 113
Haleys v. Williams, 1 Leigh, 140 240
Halstead v. Westervelt, 41 N. J. Eq. 100 271
In re Hambright, 2 N. B. R. 157 362
Hamilton v. Mississippi College, 52 Miss. 65 26
Hamilton v. Russell, 1 Cranch. 309, 316 72
Hamilton v. Railroad Co., 144 Pa. St. 34 83
Hamilton v. Barricklow, 96 Ind. 398 277
Hamilton Nat. Bank v. Halsted, 56 Hun. 530; 31 N. Y. S. R. 809; 9 N. Y. Supp. 852 85
Hamor v. Taylor Rice Engineering Co., 84 Fed. Rep. 392 331
Hamlen v. Bennett, 52 N. J. Eq. 70 18
Hamlen v. Bennett, 52 N. J. Eq. 70 19
Hamlen v. Bennett, 52 N. J. Eq. 70 109
Hamlin v. Wright, 23 Wis. 492 102
Hamlin v. Wright, 23 Wis. 491 224
Hamlin v. Wright, 23 Wis. 491 317

Page
Hamlin v. Wright, 23 Wis. 491 321
Hammond v. Messenger, 9 Sim. 327 41
Hammond v. Hudson River Iron & Machine Co., 20 Barb. 378.. 89
Hanchett v. Waterbury, 115 Ill. 227 378
Hancock v. Sears, 93 N. Y. 79 328
Handley v. Stutz, 137 U. S. 366 98
Hanford v. First Nat. Bk., 126 Ill. 584 266
Hanford v. Prouty, 133 Ill. 339 18
Hanford v. Prouty, 133 Ill. 339 265
Hanferd Oil Co. v. First N. Bk., 126 Ill. 584 174
Hannibal, etc. v. Crane, 102 Ill. 249 206
Hanover Nat. Bk. v. Blake, 142 N. Y. 404 257
In re Hansell, 1 Am. B. R. 286 394
Hanson v. Tripler, 3 Sandf. Super. Ct. 733 318
Hardman v. Sage, 124 N. Y. 25 194
Hardenburgh v. Blair, 30 N. J. Eq. 42 270
Hardenburgh v. Blair, 30 N. J. Eq. 645 272
Hardenburgh v. Blair, 30 N. J. Eq. 42 274
Hardenburgh v. Blair, 30 N. J. Eq. 645 277
Hardenburgh v. Blair, 30 N. J. Eq. 645 279
Harding v. Handy, 24 U. S. 103, (11 Wheat.) 85
Harding v. Handy, 11 Wheat. 103 124
Harloe v. Foster, 53 N. Y. 385 257
Harmon v. Page, 62 Cal. 448 98
Harmon v. Page, 62 Cal. 448 159
Harmon v. Harmon, 63 Ill. 512 213
Harrington v. La Rocque, 13 Ore. 344 199
Harper v. Carroll, 66 Minn. 487 330
Harris v. Cornell, 80 Ill. 54 149
Harris v. Douglas, 64 Ill. 466 218
Harris v. Douglas, 64 Ill. 466 293
Harris v. Hillengass, 66 Cal. 79 165
Harrison v. Union Pacific, etc., R. Co., 13 Fed. Rep. 522 27
Harrison v. Battle, 1 Dev. Eq. 537 172
Harrison v. Hallum, 5 Coldw. (Tenn.) 525 91
Harrison v. Kramer, 3 Ia. 543 128
Harrison v. Kramer, 3 Iowa 543, 561 175
Harrison v. Kramer, 3 Ia. 543 176
Harrison v. McLaren, 10 N. B. R. 244 389
Hartley v. Bloodgood, 16 Ala. 233 97
Hartshorn v. Eames, 31 Me. 93 184
Harton v. Cartner, 31 N. J. Eq. 697 170
Harton v. Cartner, 31 N. J. Eq. 697 197
Hart v. Ten Eyck, 2 Johns. Ch. 62, 89 143
Hartley v. Atkins, 64 Ill. App. 502 209
Harvey v. McDonnell, 113 N. Y. 526 30
Harvey v. McDonnell, 113 N. W. 526 180

Page
Harvey v. McDonnell, 113 N. W. 526 ... 201
Harvey v. Varney, 104 Mass. 436 ... 43
Harvey v. Varney, 104 Mass. 436 ... 326
Harwood v. Railroad Co., 17 Wall. 78 ... 165
Harvey v. State, Rogers, 123 Ind. 260 ... 95
Hastings v. Thurston, 10 Abb. N. Y. Pr. 418; S. C. 18 How. Pr. 530 ... 129
Haskell v. Ingall, 5 N. B. R. 205 ... 373
Harton v. Cartner, 31 N. J. Eq. 697 ... 95
Hastings v. Belknap, 1 Denio, 190 ... 170
Haswell v. Lincks, 87 N. Y. 637 ... 203
Hatch v. Dana, 101 U. S. 205 ... 7
Hatch v. Dana, 101 U. S. 205 ... 54
Hatch v. Dana, 101 U. S. 205 ... 83
Hatch v. Dana, 101 U. S. 205 ... 179
Hatch v. Dana, 101 U. S. 205 ... 217
Hatch v. Darr, 4 McLean. 112 ... 61
Hatcher v. Jones, 14 N. B. R. 387 ... 370
In re Hathorn, Fed. Cas. No. 6214 ... 377
Hatfield v. Cummings, (Ind.) 50 N. E. 817 ... 319
Hathaway v. Scott, 11 Paige N. Y. 173 ... 148
In re Hauck, 17 N. B. R. 158 ... 389
Hauer's Appeal, 5 W. & S. 473 ... 180
Havens v. Exstein, (Sup. Ct.) 31 N. Y. S. R. 43; 9 N. Y. Supp 605 261
Haw v. Burch, (Ia.) 77 N. W. 461 ... 335
Hawkins v. Glenn, 131 U. S. 819 ... 54
Hawkins v. Glenn, 131 U. S. 319, 334 ... 195
Hawthorn v. St. Louis, 11 Mo. 59 ... 31
Hawman v. Tegg, 2 Russ. 385 ... 33
Hawley v. Fairbanks, 108 U. S. 543 ... 64
Hays v. Dickinson, 15 N. B. R. 350 ... 342
Hays v. Hostetter, 125 Ind. 60 ... 261
Hayes v. Moore, 5 Ohio N. P. 220 ... 316
Haynes v. Brooks, 116 N. Y. 487 ... 318
Haynes v. Brooks, 116 N. Y. 487 ... 232
Hayden v. Bucklin, 9 Paige 513 ... 141
Hayden v. Bucklin, 9 Paige Ch. 512 ... 244
Hayden v. Bucklin, 9 Paige 512 ... 246
Hayward v. Bank, 96 U. S. 611 ... 165
Hazard v. Durant, 19 Fed. Rep. 471 ... 326
Hazen v. Durling, 2 N. J. Eq. 133 ... 210
Heacock v. Durand, 42 Ill. 230 ... 187
Heacock v. Durand, 42 Ill. 230 ... 209
Heacock v. Durand, 42 Ill. 230 ... 298
Heacock v. Hosmer, 109 Ill. 245 ... 195
Heard v. Jones, 15 N. B. R. 402 ... 364
Heard v. Murray, 93 Ala. 127 ... 318

Page
Healy v. Root, 11 Pick. 390 215
Heath v. Bishop, 4 Rich. Eq. 46 271
Heath v. Bishop, 4 Rich. Eq. 46 273
Heath v. Shaffer, 93 Fed. 647 374
Heath v. Shaffer, 1 N. B. N. 291 356
Heath v. Shaffer, 2 Am. B. R. 98 358
Heath v. Shaffer, 1 N. B. N. 399 371
Hebard v. Ashland Co., 55 Wis. 145 75
Hecht v. Koegel, 25 N. J. Eq. 135 21
Hedges v. Polhemus, 9 Misc. 680; 62 N. Y. S. R. 267 16
Hedges v. Polhemus, 30 N. Y. S. 556 322
Heffron v. Knickerbocker, 57 Ill. App. 339 191
Heffron v. Gage, 149 Ill. 182 80
Heffron v. Rice, 40 Ill. App. 244 139
Heilbronner v. Levy, 64 Wis. 636 229
Heilbronner v. Posey, (Ky.) 45 S. W. 505 32
In re Heinsfurter, 1 N. B. N. 467 384
Heisler v. Dickinson, 17 Ill. App. 193 144
Heidritter v. Elizabeth Oil Cloth Co., 112 U. S. 294 312
Heineman v. Hart, 55 Mich. 64 321
Helms v. Chadbourne, 45 Wis. 60 126
Helden v. Hellen, 80 Md. 616 114
Henderson v. Brooks, 3 Thomp. 445 25
Henderson v. Harness, 176 Ill. 302 275
Henderson v. Harness, 176 Ill. 302 276
Henderson v. Schaas, 35 Ill. App. 155 250
Hendricks v. Robinson, 2 Johns. Ch. 283 176
Hendricks v. Robinson, 2 Johns. Ch. 283 73
Hendricks v. Robinson, 2 Johns. Ch. 283 96
Hendricks v. Robinson, 2 Johns. Ch. 283 172
Hendricks v. Robinson, 2 Johns. Ch. 296 180
Hendricks v. Robinson, 2 Johns. Ch. 283 238
Henlich v. Kauffman, 99 Cal. 271 170
Henlich v. Kaufmann, 99 Cal. 271 286
Henry v. Elder, 63 Ga. 347 214
Henry v. Hinman, 25 Minn. 199 71
Henry v. Vermilion, etc., R. Co., 17 Ohio 187 179
Herrington v. Hubbart, 1 Scam. 569 89
Herrington v. Hubbart, 1 Scam. 569 90
Herrington v. Hubbart, 1 Scam. 569 91
Hess v. Horton, 2 App. Cases D. C. 81 170
Hesse v. Stevenson, 3 B. & P. 565 33
In re Hester, 5 N. B. R. 285 392
Heustis v. Johnson, 84 Ill. 61 218
Hewett v. Norton, 13 N. B. R. 276 372
Heyer v. Alexander, 108 Ill. 385 250
Heyneman v. Dannenberg, 6 Cal. 376 299

Page
Hibernia Ins. Co. v. St. Louis, etc., 13 Fed. Rep. 516..... 27
Hibernia Ins. Co. v. St. Louis, etc., Co., 13 Fed. Rep 516..... 179
Hibben v. Sozer, 33 Wis. 319..... 14
Hickling v. Wilson, 104 Ill. 54..... 103
Hickling v. Wilson, 104 Ill. 54..... 177
Hicks v. Chapman, 10 Allen 463..... 111
Hicks v. Knost, 1 N. B. N. 336..... 357
Hightower v. Slaton, 54 Ga. 108..... 39
High v. Bank of Commerce, 103 Cal. 525..... 318
Higgins v. Curtiss, 82 Ill. 28..... 149
Higgins v. Gillesheimer, 26 N. J. Eq. 308..... 317
Higgins v. Gillesheimer, 26 N. J. Eq. 308..... 321
Hill v. Fogg, 41 Mo. 563..... 55
In re Hill, 2 N. B. R. 53..... 372
Hill v. La Crosse, etc., R. Co., 14 Wis. 291..... 199
Hill v. Denney, 106 Ia. 726..... 187
Hills v. Sherwood, 48 Cal. 386..... 218
Hinsdale Doyle Granite Co. v. Tilley, 10 Biss. C. Ct. 572..... 40
Hinckley v. Pfister, 83 Wis. 64..... 136
Hinckley v. Kreitz, 58 N. Y. 583..... 95
Hipskind v. Murphy, 1 N. B. N. 310..... 369
Hirsch v. Israel, 106 Ia. 498..... 316
Hitt v. Ormsbee, 14 Ill. 233..... 144
Hoagland v. Lee, 40 N. J. Eq. 469..... 18
Hoagland v. Wilson, 15 Neb. 320..... 23
Hobbs v. Smith, 15 Ohio St. 419..... 273
Hobby v. Wis. Bank, 17 Wis. 167..... 230
Hoboken Bk. v. Beckman, 33 N. J. Eq. 53..... 21
Hoboken Bk. v. Beckman, 33 N. J. Eq. 53..... 143
Hockaday v. Drye, Ok. 54 Pac. 475..... 314
Hoffman's Appeal, 44 Pa. St. 95..... 240
Hogan v. Walker, 55 U. S. 29..... 6
Hogan v. Walker, 55 U. S. 29..... 12
Holand v. Cruft, 20 Pick. 321..... 111
Holbert v. Montgomery's Ex'rs, 5 Dana 11..... 181
Holbrook v. Orgler, 40 N. Y. Super. Ct. 33; 49 Howard's Practice 289..... 318
Holdbrook v. Ford, 153 Ill. 633..... 240
Holden v. Burnham, 63 N. Y. 74..... 126
Holden v. Upton, 134 Mass. 177..... 326
Holdrege v. Gwynne, 3 C. E. Green 26..... 52
Holdship v. Patterson, 7 Watts. 547..... 271
Holdship v. Patterson, 7 Watts. 547..... 273
Holgate v. Eaton, 116 U. S. 33, 6 Sup. Ct. 224..... 165
In re Holloway, 1 N. B. N. 264..... 370
In re Holloway, 93 Fed. 638..... 374
In re Holloway, 1 Am. B. R. 659..... 377

Page
Holmes v. Gilman, 138 N. Y. 369 ... 281
Holmes v. Gilman, 138 N. Y. 369 ... 289
Holmes v. Penney, 3 K. & J. 90 ... 113
Holt v. Brancroft, 30 Ala. 193 ... 180
Holton v. Burton, 78 Wis. 321 ... 231
Holton v. Railway Co., 138 Pa. St. 111 ... 134
Hollins v. Brierfield, C. & I. Co., 150 U. S. 371 ... 52
Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371 ... 66
Hollins v. Brierfield C. Co., 150 U. S. 371 ... 173
Hollins v. Brierfield C. & I. Co., 150 U. S. 371 ... 179
Hollins v. Brierfield C. Co., 150 U. S. 371 ... 195
Home Bank v. J. B. Brewster & Co., 53 N. Y. Supp. 867 ... 330
Home Nat. Bk. v. Sanchez, 131 Ill. 330 ... 266
Hooberry v. Harding, 10 Lea 392 ... 274
Hooser v. Hunt, 65 Wis. 71 ... 126
Hood v. Saunders, 11 Cole 106 ... 192
Hopkins v. Joyce, 78 Wis. 443 ... 135
Hopkins v. Joyce, 78 Wis. 443 ... 170
In re Hopkins, 1 Am. B. R. 210 ... 393
Hope v. Brinckerhoff, 4 Edw. Ch. 348 ... 149
Hope v. Brinkerhoff, 3 Edw. Ch. 445 ... 203
Hope v. Carnegie, L. R., 1 Ch. 320 ... 303
Horton v. Harlan, 7 N. B. R. 238 ... 372
Horn v. Horn, 1 Ambler's Rep. 79 ... 42
Horn v. Horn, 1 Amb. 79 ... 72
Horner v. Zimmerman, 45 Ill. 14 ... 51
Horner v. Zimmerman, 45 Ill. 14 ... 96
Horner v. Zimmerman, 45 Ill. 14 ... 191
Horner v. Zimmerman, 45 Ill. 14 ... 213
Horner v. Zimmerman, 45 Ill. 14 ... 298
Horning v. E. Griesbach Brew. Co., 84 Wis. 71 ... 215
In re Houston, 1 N. B. N. 305 ... 351
In re Houston, 94 Fed. 119 ... 374
Houston v. Levy, 44 N. J. Eq. 6 ... 12
J. M. Houston Grocer Co. v. McGinnis, (Ky.) 45 S. W. 514 ... 16
Houseman v. Grossman, 177 Pa. St. 453 ... 62
Houseman v. Grossman, 177 Pa. St. 453 ... 114
Houseman v. Grossman, 177 Pa. St. 455 ... 156
Hovey v. Elliott, 118 N. Y. 124 ... 140
Hovey v. Holcomb, 11 Ill. 660 ... 129
Hovey v. Hill, 3 Lans. 167 ... 141
Howe v. Warren, 154 Ill. 227 ... 293
Howe v. Babcock, 72 Ill. App. 68 ... 209
Howe v. Babcock, 72 Ill. App. 68 ... 210
Howard v. Sheldon, 11 Paige Ch. 558 ... 210
Howard v. Glenn, 85 Ga. 238 ... 54
Howe v. Ward, 4 Greenleaf 195 ... 136

Page
Howe v. Whitney, 66 Me. 17 ... 130
Howe v. Warren, 154 Ill. 227 ... 252
Howe v. Henriquez, 13 Wend. 240 ... 267
Howden v. Haigh, 11 Ad. & Ellis, 1033 ... 257
Howland v. Knox, 59 Ia. 46 ... 188
Hoyt v. Christie, 51 Vt. 48 ... 199
Hubbard v. McNaughton, 43 Mich. 220 ... 146
Hubbell v. Grant, 39 Mich. 641 ... 146
Hudson v. Plets, 11 Paige Ch. 180 ... 43
Hudson v. Schwab, 18 N. B. R. 480 ... 372
Hudson v. Adams, 18 N. B. R. 102 ... 367
Hudson Ass. v. Adams, 18 N. B. R. 102; 3 Cin. Law Bul. 1,066; Fed. Cas. 6,832 ... 368
Hudlun v. Blakeslee, 70 Ill. App. 664 ... 315
In re Hughs, 11 N. B. R. 542 ... 364
Hughes v. Hall, 5 Munf. 431 ... 59
Hughes v. Noyes, 171 Ill. 575 ... 178
In re Huffman, 1 Am. B. R. 587 ... 387
In re Hull, 18 N. B. R. 1 ... 364
Hulme v. Tenant, 1 Bro. C. C. 16 ... 34
Hulse v. Wright, Wright 61 ... 52
Hulbert v. Detroit Cycle Co., 107 Mich. 81 ... 82
Hume v. Condon, 44 W. Va. 553 ... 203
Humphreys v. Hopkins, 81 Cal. 551 ... 326
In re Hunt, 2 N. B. R. 540 ... 351
In re Hunt, 5 N. B. R. 493 ... 372
Hunt v. Field, 1 Stock 36 ... 101
Hunt v. Field, 1 Stock 36 ... 170
Hunt v. Field, 9 N. J. Eq. 36 ... 198
Hunt v. Field, 9 N. J. Eq. 36 ... 199
Hunt v. Gilbert, 54 Ill. App. 491 ... 250
Hunt v. Hunt, 72 N. Y. 217 ... 57
Hunt v. Johnston, 105 Ia. 311 ... 137
Hunt v. Mann, 132 Mass. 53 ... 113
Hunter v. Field, 9 N. J. Eq. 36 ... 97
Huntington v. Blun, 143 N. Y. 511 ... 194
Huntington v. Metzger, 158 Ill. 272 ... 210
Huntley v. Kingman, 152 U. S. 527 ... 260
Hurd v. Ascherman, 117 Ill. 501 ... 105
Hurlbert v. Dean, 2 Abb. (N. Y.) App. Dec. 428 ... 90
Hurd v. Ascherman, 117 Ill. 501 ... 32
Hutchinson v. Brand, 9 N. Y. 208 ... 227
Hutchinson v. Howe, 100 Ill. 11 ... 59
Hutchins v. Sprague, 4 N. H. 469 ... 257
Hutchings v. Muzzy Iron Works, 8 N. B. R. 458 ... 371
Hyde v. Chapman, 33 Wis. 42 ... 171
Hyde v. Chapman, 33 Wis. 391 ... 183

Page
Hyde v. Lynde, 4 N. Y. 387 323
Hyde v. Woods, 94 U. S. 523 272

I

Iauch v. Socanas, 56 N. J. Eq. 524 99
Iauch v. Socanas, 56 N. J. Eq. 524, 531 100
Illinois Tr. & S. Bk. v. Pacific R. Co., 115 Cal. 285 338
Illinois Central R. Co. v. Smith, 70 Miss. 344 304
Illinois Bldg. & L. Asso. v. People, 173 Ill. 638 319
Illinois Furnace Co. v. Vinnedge, 106 Ill. 650 59
Importers' Nat. Bank v. Quackenbush, 143 N. Y. 567 226
In re Ind. Ins. Co., 6 N. B. R. 260; Holmes, 103; Fed. Cas. 7,017. 341
Ingram v. Osborn, 70 Wis. 184 18
Ingalls v. Cole, 47 Me. 530 55
Innes v. Lansing, 7 Paige 583 104
Innes v. Lansing, 7 Paige 583 138
Innes v. Lansing, 7 Paige 583 200
Innes v. Lansing, 7 Paige 583 280
Re International Pulp & Paper Co., L. R., 3 Ch. Div. 594; (Ex parte Tait., L. R., 13 Eq. 311) 303
Irving v. Hughes, 2 N. B. R. 61 375
Irving v. Hess, 16 Lanc. L. Rev. 17 85
In re Irving, 14 N. B. R. 289 356
In re Irving, 14 N. B. R. 289 370
Irons v. Manufacture's Nat. Bk., 17 Fed. Rep. 308 54
Irwin v. Keen, 3 Whart. 347 113
Isee v. Stuart, 16 N. B. R. 191 358
Iselin v. Henlein, 16 Abb. N. C. 73 262
Ishmael v. Parker, 13 Ill. 324 52
Ishmael v. Parker, 13 Ill. 324 66
Ishmael v. Parker, 13 Ill. 327 131
Ishmael v. Parker, 13 Ill. 324 171
Ishmael v. Parker, 13 Ill. 324 177
Ishmael v. Parker, 13 Ill. 324 196
Ishmael v. Parker, 13 Ill. 324 201
Isham v. Schaffer, 60 Barb. 317 31

J

Jackson v. Benedict, 13 Johns. 534 42
Jackson v. Forest, 2 Barb. Ch. 576 94
Jackson v. Forest, 2 Barb. Ch. 576 116
Jackson v. Forrest, 2 Barb. Ch. 576 295
Jackson v. Holbrook, 36 Minn. 494 240
Jackson v. Hart, 11 Wend. 343 143
Jackson v. Lahee, 114 Ill. 287 249
Jackson v. McCulloch, 13 N. B. R. 283 389

Page
Jackson v. Miner, 101 Ill. 550 128
Jackson v. Moore, 6 Cow. 706 277
Jackson v. Petrie, 10 Ves. 164 59
Jackson v. Sloan, 76 N. C. 306 155
Jackson v. Seelye, 16 Johns. 197 277
In re Jacobs, 1 N. B. N. 232 392
Jacoby's Appeal, 67 Pa. St. 434 240
James v. Wortham, 88 Ill. 69 189
Jamison v. King, 50 Cal. 132 261
Jamison v. Chestnut, 8 Md. 34 86
Jacobson v. Allen, 20 Blatchf. 525 55
Jarboe v. Hey, 122 Mo. 341 273
In re Jefferson, 1 N. B. N. 288 368
Jennings v. Collins, 99 Mass. 29 111
Jenks v. Horton, 4 Det. L. N. 481 170
Jenks v. Horton, (Mich.) 4 Det. L. N. 481 201
Jerome v. McCarter, 94 U. S. 734 355
Jessup v. Hulse, 29 Barb. N. Y. 539 129
Jewell v. Knight, 123 U. S. 426 260
In re Johann, 4 N. B. R. 143 355
Johnson v. Bonfield, 19 Ky. L. Rep. 300; 40 S. W. 697 170
Johnson v. Blell, 1 Mo. App. Rep. 291 147
Johnson v. Gibson, 116 Ill. 294 57
Johnson v. Gibson, 116 Ill. 294 59
Johnson v. Huber, 134 Ill. 511 81
Johnson v. Huber, 134 Ill. 511 86
Johnson v. Huber, 134 Ill. 511 90
Johnson v. Huber, 134 Ill. 511 114
Johnson v. Farnum, 56 Ga. 144 52
Johnson v. Helmstaedter, 30 N. J. Eq. 124 112
Johnson v. Helmsteae, 19 N. B. R. 71 382
Johnson v. Parrotte, 46 Neb. 51 182
Johnson v. Roberts, 102 Ill. 655 148
Johnson v. Rogers, 15 N. B. R. 1 343
Johnson v. Rogers, 15 N. B. R. 1 366
Johnson v. Wald, 2 Am. B. R. 84 383
Johnson v. Wald, 2 Am. B. R. 84 385
Johnson v. Wald, 2 Am. B. R. 84 390
Johnson v. Waters, 111 U. S. 640 36
Johnson v. Waters, 111 U. S. 640 63
Johnson v. Waters, 111 U. S. 640 98
Johnson v. Waters, 111 U. S. 640 101
Johnson v. Waters, 111 U. S. 640 160
Johnston v. Straus, 26 Fed. Rep. 57 31
Jones v. Arena Pub. Co., 171 Mass. 22 332
Jones v. Arena Pub. Co., 171 Mass. 22 388
Jones v. Davenport, 45 N. J. Eq. 77 103

Page
Jones v. Davenport, 45 N. J. Eq. 77 215
Jones v. Fayerweather, 46 N. J. Eq. 237 102
Jones v. Green, 68 U. S. 330 50
Jones v. Green, 68 U. S. 330 55
Jones v. Green, 68 U. S. 330 65
Jones v. Green, 68 U. S. 330 74
Johns v. Green, 68 U. S. 330 170
Jones v. Green, 68 U. S. 330 171
Jones v. Green, 68 U. S. 330 172
Jones v. Green, 68 U. S. 330 173
Jones v. Green, 68 U. S. 330 178
Jones v. Green, 68 U. S. 330 214
Jones v. Garcia Del Rio, Turn. & Russ. 297 105
Johns v. Graham, 77 N. Y. 628 172
Jones v. Port Huron Engine Co., 171 Ill. 502 275
Jones v. Jones, 64 Wis. 301 218
Jones v. Lloyd, 117 Ill. 597 164
Jones v. Perkins, 76 Fed. Rep. 82 166
Jones v. Perkins, 76 Fed. Rep. 84 164
Jones v. Porter, 59 Miss. 628 153
Jones v. Smith, Walk Ch. 115 236
Jones v. Warden, 1 Mackey D. C. 476 133
Jordon v. Westerman, 62 Mich. 170 391
Jourolmon v. Massengill, 86 Tenn. 81 271
Jourolmon v. Massengill, 86 Tenn. 81 273
Judson v. Lyle, 28 Leg. Int. 140 188
Judson v. Lyford, 84 Cal. 505 238
Judge v. Herbert, 124 Mass. 330 33
Juilliard v. May, 130 Ill. 87 260
Juilliard v. May, 130 Ill. 87 264
Justice v. Scott, 4 Ired. Eq. N. C. 108 198
Justice v. Scott, 4 Ired. Eq. 108 281

K

Kalmus v. Ballin, 52 N. J. Eq. 290 109
Kalmus v. Ballin, 52 N. J. Eq. 290 195
Kane v. Bloodgood, 7 Johns. Ch. 90 62
Kane v. Bloodgood, 7 Johns. Ch. 90 70
Kane v. Bloodgood, 7 Johns. Ch. 90 163
Kane v. Lador, 56 N. J. Eq. 268 331
Kain v. Larkin, 131 N. Y. 300 15
Kain v. Larkin, 131 N. Y. 300 41
Kain v. Larkin, 141 N. Y. 144 124
Kain v. Larkin, 131 N. Y. 300, 307 126
Kaiser v. Waggoner, 59 Ia. 40 278
Karst v. Gone, 136 N. Y. 316 324

Page
Keam v. Conkwright, 78 Mich. 58 21
Keen v. Kleckner, 42 Pa. St. 529 261
In re Keiler et al., 18 N. B. R. 10; Fed. Cas. 7,647 355
Keller v. Payne, 16 N. Y. S. R. 245 187
Keller v. Payne, 22 Abb. N. C. 352 299
Kelley v. Leith, 176 Ill. 311 252
Kellogg v. Hamilton, 43 Mich. 269 177
Kendell v. Bishop, 76 Mich. 634 266
Kennedy v. Creswell, 101 U. S. 641 12
Kennedy v. Creswell, 101 U. S. 641 193
Kennedy v. Creswell, 101 U. S. 641 296
Kennedy v. Greene, 3 Myl. & K. 699, 722 125
Kennedy v. Thorp, 51 N. Y. 174 318
Kennedy v. Thorp, 51 N. Y. 174 321
Kennedy v. Thorp, 51 N. Y. 174 233
In re Kenney, 1 N. B. N. 401 354
In re Kenney, 1 N. B. N. 401 365
In re Kerby Dennis Co., 1 N. B. N. 337 369
Kerby Dennis Co., 1 N. B. N. 399 386
In re Kerosene Oil Co., 2 N. B. R. 164 372
In re Kerosene Oil Co., 2 N. B. R. 164 375
In re Kerr, 2 N. B. R. 124 355
In re Kerr, 2 N. B. R. 388 361
In re Keski, 2 Am. B. R. 79 383
Keyser's Appeal, 57 Pa. St. 236 276
Keyser v. Rice, 47 Md. 203 59
Keyser v. Rice, 47 Md. 203 304
Kilbourne v. Fay, 29 Ohio St. 536 113
Kimberly v. Sells, 3 Johns. Ch. 467 18
Kimberling v. Hartley, 1 McCrary, 136; 1 Fed. Rep. 571 101
In re Kinkead, 7 N. B. R. 439 387
Kincaid v. Dwinelle, 59 N. Y. 548 194
Kincaid v. Dwinelle, 59 N. Y. 548 202
Kinder v. Macy, 7 Cal. 206 129
King v. Dupine, 2 Atk. 603 n 72
King v. Goodwin, 130 Ill. 102 241
King v. Goodwin, 130 Ill. 102 244
King v. Wilcox, 11 Paige Ch. 589 41
In re Kingsley, 1 N. B. R. 66 390
Kinney v. Harvey, 2 Leigh. (Va.) 70 100
Kipper v. Glancey, 2 Blackf. 356 97
Kipper v. Glancey, 2 Blackf. 356 200
Kipper v. Glancey, 2 Blackf. 356 202
Kirkpatrick v. Buford, 21 Ark. 268 86
Kittredge v. Osgood, 161 Mass. 384 244
Kittel v. Augusta Y. & G. R. Co., 78 Fed. Rep. 855 310
Kitchen v. Lowery, 37 N. Y. S. R. 327 17

Page
Kitchen v. Lowery, 127 N. Y. 53 238
In re Kletchka, 92 Fed. 901 374
In re Kletchka, 1 Am. B. R. 479 376
Kluender v. Fenske, 53 Wis. 118 183
In re Klingman, 2 Am. B. R. 44 388
Knapp v. City of Brooklyn, 97 N. Y. 520 124
Knapp v. Beattie, 70 Me. 410 44
Knight v. Hunt, 5 Bing. 432 257
Knight v. Cunningham, 160 Mass. 580 166
Knowlton v. Massachusetts B. L. A., (Mass.) 50 N. E. 520 334
Knowlton v. Massachusetts B. L. A., 50 N. E. 520 338
Knower v. Central Nat. Bank, 124 N. Y. 552 238
Knower v. Central Nat. Bk., etc., 124 N. Y. 552 267
In re Knost, 1 N. B. N. 403 385
Knox v. Smith, 45 U. S. 298 74
Koechl v. Leibinger & Oehm Co., 26 App. Div. 573; 50 N. Y. Supp. 568 19
Koechl v. Leibinger & O. Brew. Co., 52 N. Y. Supp. 982 99
Koechl v. Leibinger & O. Brew. Co. 52 N. Y. Supp. 982; 24 Misc. 298 265
Koster v. Hiller, 4 Ill. App. 21 123
Koster v. Hiller, 4 Ill. App. 21 134
Kratz v. Buck, 111 Ill. 40 92
Krippendorf v. Hyde, 110 U. S. 276 64
Kronskop v. Kronskop, 95 Wis. 296 170
Kuhl v. Martin, 11 C. E. Green, 60, 65 100
Kuhl v. Martin, 26 N. J. Eq. 60 103
Kuser v. Wright, 52 N. J. Eq. 825 322

L

L'Amorneux v. Van Renselaer, 1 Barb. Ch. 34 279
In re Lachemeyer, Fed. Cas. No. 7,966 391
La Crosse Nat. Bank v. Wilson, 74 Wis. 391 73
La Crosse Nat. Bank v. Wilson, 74 Wis. 391 206
In re Lady B. M. Co., 6 N. B. R. 252; Fed. Cas. 7,980 353
In re Lady Byrn Mining Co., 6 N. B. R. 252 373
Ladd v. Judson, 71 Ill. App. 283; 174 Ill. 344 171
Ladd v. Judson, 174 Ill. 344 200
Ladd v. Smith, 107 Ala. 506 283
Laidley v. Laidley, 25 W. Va. 525 285
Lakenan v. Robards, 9 Mo. App. 179 188
Lallman v. Hovey, 92 Hun. 419; 36 N. Y. Supp. 662 97
Lamar Ins. Co. v. Moore, 84 Ill. 575 54
Lamar v. Scott, 4 Rich. 516 35
Lamb v. Damrou, 7 N. B. R. 509 381
Lambert v. Miller, 37 N. J. Eq. 344 40

Page
Lamberton v. Pereles, 87 Wis. 449 273
Lampert v. Haydel, 20 Mo. App. 616 42
Lamont v. Cheshire, 65 N. Y. 30 140
Lamonte v. Pierce, 34 Wis. 483 228
Lamonte v. Pierce, 34 Wis. 483 229
Lane v. Lane, 8 Allen, 350 276
Lane's Appeal, 105 Pa. St. 49 7
Lander v. Arno, 65 Me. 26 108
Lang v. Brown, 21 Ala. 179 291
Lange v. Benedict, 73 N. Y. 12, 27 57
Lange v. Braynard, 104 Cal. 156 89
Langford v. Langford, 5 L. J. (N. S.) Ch. 60 37
Langford v. Langford, 8 L. J. (N. S.) Ch. 60 59
Langley v. Perry, 2 N B. R. 180 379
Lansing v. Easton, 7 Paige Ch. 364 238
Lansing v. Easton, 7 Paige 364 235
Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112; Fed. Cas. 8,079 340
Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112; Fed. Cas. 8,079 343
Lannon v. Clark, 4 McLean 18 63
Laswell v. Robbins, 39 Ill. 209 287
Lathrop v. McBurney, 71 Ga. 815 277
Lave v. Bowen, 2 Jones' Eq. (N. C.) 49 37
Lawrence v. Bank of Republic, 35 N. Y. 320 88
Lawrence v. Bank, etc., 35 N. Y. 320 114
Lawrence v. Traner, 136 Ill. 474 148
Lawrence v. Neff, 41 Cal. 566 261
Lawrence v. Batcheller, 131 Mass. 504 301
Lea Bros. v. West, 1 Am. B. R. 261 376
Lea v. West, 1 Am. B. R. 261 379
Lea v. George M. West Co., 91 Fed. 237 377
Lea v. Iron Belt Mercantile Co., (Ala.) 24 S. 28 330
Leach v. Kelsey, 7 Barb. 466 112
Leary v. Columbia River & P. S. N. Co., 82 Fed. Rep. 775 309
Leake v. Benson, 29 Gratt. 153 292
Leasure v. Farquer, 27 Ore. 334 124
Leavett v. Palmer, 3 Comst. 19 323
Leavitt v. Blatchford, 17 N. Y. 521 260
Leavitt v. Beirne, 31 Conn. 1 271
Leaycraft v. Hedden, 4 N. J. Eq. 512 34
Le Duc v. Brandt, 110 N. C. 289 50
Le Duc v. Brandt, 110 N. C. 289 203
The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387 348
In re Lediegh Carriage Co., 1 N. B. N. 387 374
The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387 380
The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387 387

Page
Lee v. Hunter, 1 Paige Ch. 519 18
In re Leeman, 2 Am. B. R. 52 369
In re Leeman, 1 N. B. N. 331 370
Leggett v. Hopkins, 7 Paige 149 203
Leggett v. G. N. R. Co. L. R., 1 Q. B. Div. 599 108
Lehman v. Meyer, 67 Ala. 396 37
Lehman v. Glenn, 87 Ala. 618 214
Leigh v. Harrison, 69 Miss. 923 273
Leighton v. Harwood, 12 N. B. R. 360 ..... —
Leicester v. Rose, 4 East 372, 381 257
Leitch v. Wells, 48 N. Y. 385 140
Le Moyne v. Quimby, 70 Ill. 399 67
Le Moyne v. Quimby, 70 Ill. 399 68
Le Moyne v. Quimby, 70 Ill. 399 218
Lentilhon v. Moffat, 1 Edw. Ch. 451 95
Leopold v. The People, 140 Ill. 552 154
Le Roy v. Matthewson, 47 N. Y. Super. Ct. 389 46
In re Levy, 1 N. B. R. 66 395
Levy v. Marx, Miss. 1880 238
Lewis v. Chamberlain, 108 Cal. 525 286
Lewis v. Lanphere, 79 Ill. 187 145
Lewis v. Lanphere, 79 Ill. 187 174
Lewis v. Lanphere, 79 Ill. 187 189
Lewis v. Palmer, 28 N. Y. 271 95
Lewis v. Smith, 2 S. & R. 142 180
Lewis v. Glenn, 84 Va. 947 54
Libby v. Norris, 142 Mass. 246 80
Lichtenberg v. Herdtfelder, 33 Hun. 57 170
Lichtenberg v. Herdtfelder, 103 N. Y. 302 183
Life Association v. Fassett, 102 Ill. 315 55
Ligett v. Glenn, 51 Fed. Rep. 381 339
Lillard v. McGee, 4 Bibb. 165 5
Lilienthal v. Drucklieb, (C. C. S. D. N. Y.) 84 Fed. Rep. 918 ... 45
Lilliendahl v. Fellerman, 11 How. Pr. 528 228
Lindsay v. Harrison, 8 Ark. 302 274
Linton v. Linton, L. R., 15 Q. B. Div. 239 391
Linville v. Hadden, (Md.) 41 Atl. 1097 332
Lippincott v. Evans, 35 N. J. Eq. 553 271
Lippincott v. Evans, 35 N. J. Eq. 553 274
Liverpool Ins. Co. v. Mass, 77 U. S. 566 280
Livingston v. Cleaveland, 5 How. Pr. 396 227
Livingston v. Swift, 23 How. Pr. 1 230
Lobstein v. Lehn, 120 Ill. 549 32
Logan v. McCall Pub. Co., 140 N. Y. 447 231
Lombard v. Morse, 155 Mass. 136 111
London & S. F. Bk. v. Willamette Steam Mill L. & Mnfg. Co.,
80 Fed. Rep. 226 332

Page
London & S. F. Bk. v. Willamette Steam Mill L. & Mnfg. Co., 80 Fed. Rep. 226 333
Long v. Barker, 85 Ill. 431 181
Long v. Meyestre, 1 Johns. Ch. 306 86
Long v. McConnell, 158 Pa. 573 188
Long v. Page, 10 Humph. (Tenn.) 541 36
Long v. Yanceyville Bk., 85 N. C. 354 96
Longman v. Tripp, 2 B. & P. N. S. 67 33
Loomis v. Tifft, 16 Barb. 541 184
Loomis v. Tifft, 16 Barb. 541 200
Loomis v. Tifft, 16 Barb. 541 280
Lopez v. Merchants & F. N. Bk., 18 App. Div. 427; 46 N. Y. Supp. 91 17
Lopez v. Merchants & Farmers Nat. Bk., 18 App. Div. 427, 46 N. Y. Supp. 91 186
In re Lord, 5 N. B. R. 318 388
Lore v. Getsinger, 7 N. J. Eq. 191 103
Lord Portarlington v. Soulby, 3 M. & K. 104 59
Loud v. Sergeant, 1 Edw. Ch. 164 12
Love v. Bret Harte, 118 Mass. 271 34
Lovett v. Gillender, 35 N. Y. 617 275
Lovett v. Gillender, 35 N. Y. 617 276
Love v. Teter, 24 W. Va., 741 286
Loving v. Pairs, 10 Ia. 282 176
Lowry v. Morrison, 11 Paige Ch. 327 88
Lowry v. Morrison, 11 Paige Ch. 327 163
Low v. Marco, 33 Me. 45 72
Low v. Pratt, 53 Ill. 438 81
Low v. Mortman, 44 N. J. Eq. 193 261
Lloyd v. Passingham, 16 Ves. Jr. 59 313
Luck v. Tiedway, 45 Mo. App. 507 54
Ludington v. Thompson, 153 N. Y. 499 325
Ludington v. Thompson, 153 N. Y. 499 331
Lund v. Tyngsborough, 9 Cush. 36 51
Lund v. Tyngsborough, 9 Cush. 36 125
Lyle v. Com. Nat'l Bank, 93 Va. 487 316
Lyman v. Place, 26 N. J. Eq. 30 158
Lynde v. McGregor, 13 Allen, 182 31
Lynde v. McGregor, 13 Allen 172 113
Lynch v. Johnson, 48 N. Y. 27 9
Lynch v. Johnson, 48 N. Y. 27 11
Lynch v. Johnson, 48 N. Y. 27 224
Lyon v. Robbins, 46 Ill. 276 ..... 177, 213, 239
Lyon v. Robbins, 46 Ill. 276 244
Lyons v. Robbins, 46 Ill. 276 245
Lyons v. Robbins, 46 Ill. 276 246
Lyons v. Houston, 2 Harr. Del. 349 199

Page
Lyon v. Bolling, 9 Ala. 463 95
Lynch v. Johnson, 48 N. Y. 27 235
Lynch v. Johnson, 48 N. Y. 27 241
Lynch v. Utica Ins. Co., 18 Wend. 236 272

M

McArthur v. Hoysradt, 11 Paige (N. Y.) 495 92
McArthur v. Hoysradt, 11 Paige Ch. 495 116
McArthur v. Hoysradt, 11 Paige Ch. 495 313
McAuinch v. Dennis, 123 Ind. 21 126
McCabe v. Cooney, 2 Sandf. N. Y. Ch. 314 162
McCabe v. Sumner, 40 Wis. 386 215
McCalmont v. Lawrence, 1 Blatchf. 232 21
McCalmont v. Lawrence, 1 Blatchf. 232 47
McCauley v. Hargroves, 48 Ga. 50 217
McCanless v. Smith, 51 N. J. Eq. 505 214
McCanless v. Smith, 51 N. J. Eq. 505 215
McConihay v. Wright, 121 U. S. 201 64
McCartney v. Bostwick, 31 Barb. 390 94
McCartney v. Bostwick, 32 N. Y. 53 183
McCartney v. Bostwick, 32 N. Y. 53 194
McCartney v. Bostwick, 32 N. Y. 53 200
McCartney v. Bostwick, 32 N. Y. 53 253
McCartney v. Bostwick, 32 N. Y. 53 280
Com. ex rel. McCormick v. Pennsylvania Bldg. & L. Asso., C. P., 20 Pa. Co. Ct. 589 319
McCormick Harvester Mach. Co. v. Gates, 75 Ia. 343 276
McCleary v. Ellis, 54 Ia. 311 275
McCleary v. Ellis, 54 Ia. 311 276
McCole v. Loehr, 78 Ind. 430 126
McConnell v. Dickson, 43 Ill. 99 113
McConnell v. Dickson, 43 Ill. 99 177
McConnell v. Dickson, 43 Ill. 99 180
McConnell v. Dickson, 43 Ill. 99 181
McConnell v. Dickson, 43 Ill. 99 185
McConnel v. Dickson, 43 Ill. 100 191
McConnel v. Dickson, 43 Ill. 99 298
McCoun v. Dorsheimer, Clark. Ch. 144 31
McCreery v. Cobb, 93 Mich. 463 146
McCreery v. Berney Nat. Bk. (Ala.) 22 So. 577 189
McCreery v. Berney (Ala.) Nat. Bank, 22 So. 577 221
McCullough v. Colby, 5 Bosw. 477 176
McCullough v. Colby, 5 Bosw. 477 170
McDermott v. Strong, 4 Johns. Ch. 688 32

Page
McDermott v. Strong, 4 Johns. Ch. 687..... 50
McDermott v. Strong, 4 Johns. Ch. 687..... 170
McDermott v. Strong, 4 Johns. Ch. 687..... 175
McDermott v. Strong, 4 Johns. Ch. 687..... 182
McDermott v. Strong, 4 Johns. Ch. 687..... 188
McDermott v. Strong, 4 Johns. Ch. 687..... 235
McDermott v. Strong, 4 Johns. Ch. 687..... 236
McDermott v. Strong, 4 Johns. Ch. 687..... 238
McDermott v. Strong, 4 Johns. Ch. 687..... 277
McDermott v. Strong, 4 Johns. Ch. 687..... 279
McDowell v. Brown, 21 Mo. 57..... 275
McDowell v. Cochran, 11 Ill. 31..... 66
McDowell v. Cochran, 11 Ill. 31..... 68
McDowell v. Cochran, 11 Ill. 31..... 92
McDowell v. Cochrane, 11 Ill. 31..... 171
McDowell v. Cochrane, 11 Ill. 31..... 177
McDowell v. Cochran, 11 Ill. 31..... 193
McDowell v. Cochran, 11 Ill. 31..... 195
McDowell v. Cochran, 11 Ill. 300..... 218
McDowell v. Read, 3 La. Ann. 391..... 59
McDermott v. Eborn, 90 Ala. 258..... 238
McDonogh v. Murdock, 15 How. 367..... 275
McDougall v. Board, etc., 4 Minn. 184..... 31
McDougal v. Board of Sup., 4 Minn. 184..... 40
McDougald v. Dougherty, 11 Ga. 570..... 180
McDowell v. Bell, 86 Cal. 625..... 225
McDonald v. McDonald, 16 Vt. 630..... 143
McElwain v. Willis, 3 Paige 505..... 170
McElwain v. Willis, 9 Wend. 548..... 171
McElwain v. Willis, 9 Wend. 548..... 172
McElwain v. Willis, 9 Wend. 548..... 173
McElwain v. Willis, 9 Wend. 549..... 182
McElwain v. Willis, 9 Wend. 548..... 188
McElwain v. Willis, 9 Wend. 548..... 200
McElwain v. Willis, 9 Wend. 548..... 227
McElwain v. Willis, 9 Wend. 548..... 280
McElroy v. Hiner, 133 Ill. 156..... 69
McGough v. Insurance Bank, 2 Ga. 151..... 129
McGoldrick v. Slevin, 43 Ind. 522..... 52
McGoldrick v. Slevin, 43 Ind. 522..... 67
McGaughey v. Brown, 46 Ark. 25..... 160
McGaughey v. Brown, 46 Ark. 25..... 163
McIlvain v. Smith, 42 Mo. 45..... 271
In re McKay, 1 Am. B. R. 292..... 360
McKay v. Funk, 13 N. B. R. 334..... 370
McKay v. Funk, 13 N. B. R. 324..... 375
McKay v. Green, 3 John. Ch. 56..... 296

Page
McKibben v. Barton, 1 Mich. 213 182
McKinney v. Farmers' Nat. Bk., 104 Ill. 180 249
McKusick v. Seymour, 48 Minn. 158-172 31
McLaughlin v. Bank of Potomac, 48 U. S. 220 136
McLean v. Weeks, 61 Me. 277 111
McLean v. Cary, 88 N. Y. 391 316
McLure v. Benceni, 2 Ired. Eq. 513, 519 195
McMahon v. Allen, 35 N. Y. 403 112
McMahon v. Gray, 150 Mass. 289 35
McMannomy v. Chicago, D. & O. R. Co., 167 Ill. 497 34
McMannomy v. Chicago, D. & V. R. Co., 167 Ill. 497; 47 N. E. 712, Revg. 63 Ill., App. 259 164
McMeekin v. Evans, 1 Hill Ch. 288 240
McMillan v. Reynolds, 11 Cal. 373 18
McHenry v. Lasociete & C., 95 U. S. 58 355
McMullen v. Ritchie C. C. N. D. Ohio, 64 Feb. Rep. 253 147
McNab v. Heald, 41 Ill. 326 86
McNab v. Heald, 41 Ill. 326 191
McNab v. Heald, 41 Ill. 326 298
McNairy v. Eastland, 10 Yerg. 310 172
McRea v. Branch Bank of Alabama, 19 How. 376 91
Macgill v. Hyatt, 80 Md. 253 94
Maass v. Falk, 146 N. Y. 34 260
Mablock v. Babb, 31 Or. 516 25
Mabon v. Onzley Elec. Co., 156 N. Y. 196 329
In re Mackintosh, 2 N. B. R. 158 365
Macey v. Childress, 2 Tenn. Ch. 23 138
Maders v. Whallon, 74 Hun. 372 15
Magill v. Hyatt, 80 Md. 253 37
Magill v. Hyatt, 80 Md. 253 39
Macgill v. Hyatt, 80 Md. 253 291
Magee v. Badger, 34 N. Y. 247 125
Mahaffy v. Mahaffy, 63 Ia. 55 129
Mahoney v. McWalters, 3 App. Div. 248; 38 N. Y. Supp. 256 93
Maiders v. Culver, 1 Duv. Ky. 164 112
Mallow v. Hinde, 12 Wheat. 193 91
Mallows v. Hinde, 12 Wheat. 193 89
Mallows v. Hinde, 12 Wheat. 193 90
Mallory v. Vanderbilt, 4 Abb. N. C. 127 192
Mallory v. Craige, 15 N. J. Eq. 73 12
Mallory v. Vanderheyden, 3 Barb. Ch. 9 279
In re Mallory, 6 N. B. R. 22 372
In re Mallory, 1 Saw. 88 351
In re Mallory, Fed. Cas. No. 8991 375
In re Mallory, 6 N. B. R. 22 352
Maltbie v. Hotchkiss, 5 N. B. R. 485 355
Mallalieu v. Hodgson, 16 Ad. & Ellis, N. S. 689 257

Page
Mann v. Pentz, 3 Comst. 415 7
Mann v. Ruby, 102 Ill. 348 93
Mann v. Ruby, 102 Ill. 348 112
Mann v. Ruby, 102 Ill. 348 177
Mandeville v. Avery, 124 N. Y. 376 (reversing 57 Hun. 78) 232
Mandeville v. Avery, 124 N. Y. 376 318
Mandeville v. Avery, 124 N. Y. 376 321
Mandeville v. Avery, 124 N. Y. 376 322
Mandlebaum v. McDonell, 29 Mich. 78 276
Manson v. Felton, 13 Pick. 206 111
Manson v. Phoenix Ins. Co., 64 Wis. 26 216
Manchester v. McKee, 4 Glim. 511 132
Manchester v. McKee, 4 Gilm. 511 187
Manchester v. McKee's Ex'rs, 4 Gilm. 511 196
In re Manchester v. M. R. Co., L. R. 14 Chancery D., 645 311
Manning v. Beck, 129 N. Y. 1 260
Manning v. Merritt, Clark's Chy. 98 74
Mansur & T. I. Co. v. Jones, 143 Mo. 253 25
Mansur & T. Imp. Co. v. Jones, 143 Mo. 253 187
Manufacturing Co. v Hamilton, Mass., 51 N. E. 529 377
Marriage v. Woodruff, 77 Ia. 291 225
Marriage v. Woodruff, 77 Ia. 291 229
Marsh v. Burroughs, 1 Woods 463 55
Marsh v. Burroughs, 1 Wood 463 159
Marsh v. Burroughs, 1 Woods 463 213
Marsh v. Burroughs, 1 Woods 463 214
Marsh v. Whittmore, 21 Wall. 178 165
Marsh v. Pike, 10 Paige Ch. 595 187
Marshall v. Milwaukee, etc., Mills, 84 Wis. 23 215
In re Marshall Paper Co., 1 N. B. N. 407 391
Marston v. Dresen, 76 Wis. 418 124
Marz v. Spaulding, 35 Hun. 478 227
Marrow Shoe Mfg. Co. v. New England Shoe Co., 57 Feb. Rep. 685. 125
Mason v. Pierson, 69 Wis. 585 95
Mason v. Worthen, 14 N. B. R. 346 356
Mason v. Pomeroy, 151 Mass. 164 244
Massie v. Watts, 6 Cranch. 148 37
Massie v. Watts, 6 Cranch. 148 59
Massie v. Watts, 6 Cranch. 148 303
Matin v. Judd, 60 Ill. 78 180
Mather v. Coe, 1 Am. B. R. 504 341
Mather v. Coe, 1 Am. B. R. 504 380
Mattingly v. Nye, 75 U. S. 370 213
Mattingly v. Nye, 75 U. S. 370 215
Matthews v. Lloyd, 89 Ky. 625 18
Mathews v. Mobile Mut. Ins. Co., 75 Ala. 85 106
Mattison v. Demarest, 1 Robt. (N. Y.) 717 99

Page
Marshall v. Knox, 8 N. B. R. 97 351
Marshall v. Knox, 8 N. B. R. 97 355
Marshall Bank v. Hosmer, 48 Mich. 200 147
Marshall v. Blass, 82 Mich. 518 17
Martin v. Davis, 82 Ind. 38 273
Martin v. Rainwater, 56 Fed. Rep. 7 19
Martin v. Rainwater, 56 Fed. Rep. 7 101
Martin v. Warner, 34 W. Va. 182 157
Mare v. Malachy, 1 Myl. & Cr. 559 223
Markson v. Heney, 4 N. B. R. 165 351
Markson v. Heney, 4 N. B. R. 165 375
Markson v. Haney, 12 N. B. R. 484 370
Marlatt v. Warwick, 19 N. J. Eq. 439 287
Marvin v. Hawley, 9 Mo. 378 199
Maxwell v. Faxton, 4 N. B. R. 60 377
May v. First Nat. Bk., 122 Ill. 551 250
May v. Greenhill, 80 Ind. 124 52
May v. Greenhill, 80 Ind. 124 67
Mays v. Rose Freeman's Chy. Miss. 703 313
Mayo v. Moritz, 151 Mass. 481 45
Mayer B. & S. Co. v. Falk, 89 Wis. 216 215
Mayer v. Hellman, 91 U. S. 496 379
Mayor, etc., v. Alyea, 53 N. J. Eq. 580 218
Mayor, etc., v. Conover, 5 Abb. Pr. 244 154
Mayor v. Rowland, 26 Ala. 498 31
Mayor v. Root, 8 Md. 95 31
Mayorowicz v. Payson, 153 Ill. 484 39
Maynard v. Cleaves, 149 Mass. 307 33
Maynard v. Cleaves, 149 Mass. 307 273
Mean's Appeal, 85 Pa. St. 75 54
Mead v. Phillips, 1 Sandf. Ch. 83 19
Mead v. Merritt, 2 Paige 403 59
Mebane v. Mebane, 4 Ired. Eq. 181 271
Mechanics', etc., Bk. v. Dakin, 28 How. Pr. 502 94
Mechanics' and Traders' Bank v. Dakin, 51 N. Y. 519 198
Mechanics' Bk. v. Dakin, 51 N. Y. 519 199
Mechanics' and Traders' Bank v. Dakin, 51 N. Y. 519 299
Meding v. Todd, N. J. Eq. 41 Atl. 222 334
Meek v. Pierce, 19 Wis. 300 230
Meier v. Waco, St. Bk., 27 S. W. 881 25
Meissner v. Meissner, 68 Wis. 336 170
Meissner v. Meissner, 68 Wis. 336 171
Meissner v. Meissner, 68 Wis. 336 186
Meissner v. Meissner, 68 Wis. 336 216
Meinhard v. Strickland, 29 S. C. 491 52
Melville v. Brown, 16 N. J. L. 363 198
Mellen v. Moline, etc., Wks., 131 U. S. 330 170

Page
Menk v. Steinfort, 39 Wis. 370 231
Menton v. Adams, 49 Cal. 620 257
Menken v. Binkley, 94 Tenn. 721 275
Menzesheimer v. Kennedy, 75 Wis. 411 261
Merchants, etc., Borland, 53 N. J. Eq. 282 218
Merchants' Nat. Bk. v. Chattanooga C. Co., 53 Fed. Rep. 314 217
Merchants' Bank v. Chandler, 19 Wis. 434 214
Merchants', etc. Bk. v. Griffith, 10 Paige Ch. 519 74
Merchants', etc. Bk. v. Griffith, 10 Paige Ch. 519 170
Merchants', etc. Bk. v. Griffith, 10 Paige Ch. 519 203
Merchants' Bank v. Griffith, 10 Paige 519 209
Merchants' N. Bk. v. Hogle, 25 Ill. App. 543 16
Merchants' Nat. Bk. v. McGee, 108 Ala. 304 196
Merchants' & Planters' Bank v. Masonic Hall Trustees, 65 Ga. 603 24
Merchants' Nat. Bk. v. Northwestern, etc., Co., 48 Minn. 361 55
Merchants' Nat'l Bk. v. Pennsylvania S. Co. 57 N. J. Eq. 336 329
Merchants' Bk. v. Paine, 13 R. I. 592 200
Merchants' Bk. v. Spalding, 9 N. Y. 53 19
In re Mer. Ins. Co., 6 N. B. R. 43 342
In re Merchants' Ins. Co., 6 N. B. R. 43 378
In re Mer. Ins. Co., 6 N. B. R. 441 377
Mercantile Trust Co. v. Southern States Land & T. Co., 52 U. S. App. 675, 86 Fed. Rep. 711 336
Mercantile Nat. Bk. v. McFarlane, 71 Minn. 497 337
Mercier v. Lewis, 39 Cal. 532 128
Merrell v. Johnson, 96 Ill. 224 123
Merrell v. Johnson, 96 Ill. 224 134
Merrell v. Com. Ins. Co., 166 Mass. 238 244
Merrill v. First Nat'l Bk., 75 Fed. Rep. 148 335
Merriam v. Sewell, 8 Gray (Mass.) 316 94
Merry v. Freeman, 44 Mo. 518 195
Merwin v. City of Chicago, 45 Ill. 133 40
Messersmith v. Bank, 15 N. W. 440 7
Messersmith v. Sharon S. Bk., 96 Pa. St. 440 179
Merriman v. Chicago & E. I. R. Co., 66 Fed. Rep. 663, 64 Fed. Rep. 535 33
Metcalf v Moses, 55 N. Y. Supp. 179 18
Metcalf v. Del Valle, 64 Hun. 245, 137 N. Y. 545 318
Metcalf v. Del Valle, 137 N. Y. 545 (affirming 64 Hun. 245) 232
Metropolitan Bk. v. Godfrey, 23 Ill. 579 32
Metropolitan Nat. Bk. v. Loyd, 90 N. Y. 530 289
Meux v. Anthony, 11 Ark. 411 170
In re Meyers, 1 Am. B. R. 347 343
In re Meyers, 1 N. B. N. 293 374
In re Meyers, 1 N. B. N. 207 386
In re Moyer, 1 Am. B. R. 577 386

Page
Meyer v. Hileman, 71 U. S. 329 378
Meyers v. Fenn, 5 Wall. 205 102
Meyers v. Seeley, 10 Nat. Bk. Reg. 411 7
Michigan C. R. Co. v. Keohane, 31 Ill. 144 209
Michaels v. Post, 21 Wall. 398 363
Miers v. Zanesville Co., 11 Ohio 273 54
Miers v. Zanesville Elc. Co., 11 Ohio 273 179
Miers v. Zenesville & Co., 13 Ohio 197 238
In re Miller, 1 N. B. N. 263 392
Miller v. Bowles, et al., 10 N. B. R. 515 342
Miller v. Sherry, 69 U. S. 237 59
Miller v. Sherry, 69 U. S. 237 177
Miller v. Sherry, 69 U. S. 237 235
Miller v. Sherry, 69 U. S. 237 237
Miller v. Sherry, 69 U. S. 237 239
Miller v. Sherry, 69 U. S. 237 241
Miller v. Sherry, 69 U. S. 237 246
Miller v. Sherry, 69 U. S., 10 Wall. 237 328
Miller v. Dayton, 47 Ia. 312 170
Miller v. Dayton, 47 Ia. 312 195
Miller v. Dayton, 47 Ia. 312 199
Miller v. Davidson, 3 Gilm. 518 9
Miller v. Davidson, 3 Gilm. 518 69
Miller v. Davidson, 3 Gilm. 518 149
Miller v. Davidson, 3 Gilm. 518 171
Miller v. Davidson, 5 Gilm. 518 175
Miller v. Davidson, 3 Gilm. 518 177
Miller v. Davidson, 3 Gilm. 518 196
Miller v. Davidson, 3 Gilm. 518 197
Miller v. Davidson, 3 Gilm. 518 201
Miller v. Kehoe, 107 Cal. 340 113
Miller v. Kehoe, 107 Cal. 340 157
Miller v. Matthews, 87 Md. 464 166
Miller v. Hall, 70 N. Y. 250 84
Miller v. Jamison, 24 N. J. Eq. 41 140
Miller v. Mackenzie, 29 N. J. Eq. 291 109
Miller v. Mackenzie, 29 N. J. Eq. 291 224
Miller v. Mackenzie, 29 N. J. Eq. 291 232
Miller v. Mackenzie, 29 N. J. Eq. 291 317
Miller v. Mackenzie, 29 N. J. Eq. 291 321
Miller Nixon & Co. v. Southern Land & L. Co., 53 S. C. 364 311
Millard v. Parsell, 77 N. W. 390 36
Millison v. Fisk, 43 Ill. 112 199
Mills v. Kierman, 1 N. B. N. 410 371
Mill River L. T. Asso. v. Claflin, 9 Allen 101 74
In re Mills, 17 N. B. R. 472; Fed. Cas. 9, 612 343
Mineral Point R. Co. v. Barron, 83 Ill. 365 304

Page
Miner v. Lane, 87 Wis. 348 184
Minn. Thresher etc., Co. v. Langdon, 44 Minn. 37 54
Minneapolis Base Ball Co. v. City Bank, Minn., 76 N. W. 1024.. 327
Mississippi Mills v. Cohn, 150 U. S. 202 64
Mississippi Mills v. Cohn, 150 U. S. 202 73
Missouri L. M. & S. Co. v. Reinhard, 114 Mo. 218 179
Miner v. Lane, 87 Wis. 348 253
In re Mitchell, 8 N. B. R. 47 369
Mitchell v. Bunch, 2 Paige 606 59
Mitchell v. Byrns, 67 Ill. 522 129
Mitchell v. Byrns, 67 Ill. 522 130
Mitchell v. Byrns, 67 Ill. 522 131
Mitchell v. Byrnes, 67 Ill. 522 209
Mitchell v. McKibben, 8 N. B. R. 548 381
Mitchell v. McClure, 1 Am. B. R. 53 383
Mitchell v. Sawyer, 115 Ill. 650 158
Mitchell v. Shook, 72 Ill. 492 304
Mitchell v. Milhoan, 11 Kan. 617 44
Mizell v. Herbert, 12 S. & M. 547 180
Morrow Shoe Mfg. Co. v. New England Shoe Co., 57 Fed. Rep. 685, 60 Fed. Rep. 341 52
Morrell v. First Nat. Bk., 91 U. S. 357 50
Montgomery Web Co. v. Dienelt, 133 Pa. St. 585 179
Montgomery v. McGee, 7 Humph. 234 171
Montagu v. Horton, 12 Wis. 391 171
Moncure v. Hanson, 15 Pa. St. 385 112
Moncure v. Hanson, 15 Pa. St. 385 113
Monroe v. Trenholm, 112 N. C. 634 273
M. V. Monarch Co. v. Bank of Hardinsburg, Ky., 44 S. W. 956.... 309
Monroe Bk. v. Schermerhorn, Clark's Ch. 214 312
Montague v. Horton, 12 Wis. 599 299
Moog v. Talcott, 72 Ala. 210 157
Moody v. Gay, 15 Gray 457 35
Moody v. Gay, 15 Gray 457 190
Moore v. Francis, 17 Tex. 28 103
Moore v. Holt, 3 Tenn. Ch. 141 138
Moore v. Wood, 100 Ill. 451 32
Moore v. Hoisington, 31 Ill. 243 149
Moore v. Flynn, 135 Ill. 74 14
Moores v. White, 3 Gratt. 139 291
Moore v. Lopliff, 107 Ill. 241 112
Moor v. Anglo-Italian Bank, L. R., 10 Ch. Div. 681 303
Moore v. Los Angeles Iron & S. Co., 89 Fed. Rep. 73 318
Moore v. Caldwell, 8 Rich. Eq. 22 295
Moore v. Kidder, 55 N. H. 488 298
Morrison v. Shuster, 1 Mackey D. C. 190 191
Morrison v. Shuster, 1 Mackey (D. C.) 190 287

Page
Mortland v. Mortland, 151 Pa. St. 595 62
Morton v. Hull, 77 Tex. 80 304
Moritz v. Miller, 87 Ala. 331 318
Morgan v. Neville, 74 Pa. St. 52 206
Moritz v. Hoffman, 35 Ill. 553 20
Moritz v. Hoffman, 35 Ill. 553 123
Moritz v. Hoffman, 35 Ill. 553 134
Moritz v. Hoffman, 35 Ill. 553 136
Moseley v. Boush, 4 Rand 392 41
Moses v. Micou, 79 Ala. 564 273
Moshier v. Meek, 80 Ill. 79 177
Motteux v. London Assurance Co., 1 Atk. 545 41
Moulton v. Cornish, 138 N. Y. 133 90
Mountain v. Fisher, 22 Wis. 93 230
Mountain v. Fisher, 22 Wis. 93 231
In re Moyer, 1 N. B. N. 260 363
Moyer v. Dewey, 103 U. S. 301 321
Moyer v. Dewey, 103 U. S. 301 384
Mulford v. Peterson, 6 Vr. 127, 133 62
Mulford v. Peterson, 35 N. J. L. 127 70
Mulford v. Peterson, 35 N. J. L. 127 72
Mulcahey v. Strauss, 151 Ill. 70 312
Muller v. Inderreiden, 79 Ill. 382 14
Mulhall v. Quinn, 1 Gray 105 18
Mumper v. Wilson, 72 Ia. 163 304
Murray v. Hay, 1 Barb. Ch. 59 96
Murray v. Hay, 1 Barb. Ch. 59 102
Mugge v. Ewing, 54 Ill. 236 20
Mugge v. Ewing, 54 Ill. 236 177
Munger v. Jacobson, 99 U. S. 349 54
Munn v. Marsh, 38 N. J. Eq. 410 92
Murray v. Drake, 46 Cal. 644 18
Murray v. Ager, 20 Pat. Off. Gaz., 1311 N. S. 358 33
Murray v. Lylburn, 2 Johns. Ch. 441 141
Murtha v. Curley, 90 N. Y. 372 150
Murphy v. Briggs, 89 N. Y. 446 261
Myers v. Amey, 21 Md. 302 33
Myers v. Fenn, 72 U. S. 205 97
Myers v. Myers, 15 App. Div. 448, 44 N. Y. Supp. 513 322
Myer et al. v. Crystal Lake P. & P. Works, 14 N. B. R. 9 341
Myer v. Tighe, 151 Mass. 354 111
M. & N. Nat'l Bk. v. Brady's Bend Iron Co., 5 N. B. R. 419 383

N

Nagle v. James, 7 Abb. Pr. 234 227
Nassauer v. Techner, 65 Wis. 388 216

Page
In re Nathan, 92 Fed. Rep., 590 374
National T. W. Co. v. Ballou, 146 U. S. 517 52
National T. Wks. v. Ballou, 146 U. S. 517 66
National Tube Works Co. v. Ballou, 146 U. S. 517 131
National Tube Works Co. v. Ballou, 146 U. S. 517 172
National Tube Works Co. v. Ballou, 146 U. S. 517 192
National Tube Works Co. v. Ballou, 146 U. S. 517 194
Nat. Union Bk. v. Reed, 27 Abb. N. C. 5 124
Nat. Mechanics' B. A. v. Mariposa Co, 60 Barb. 423 66
Nat. Tradesman's Bank v. Wetmore, 124 N. Y. 241 108
Nat. Tradesmen's Bk. v. Wetmore, 124 N. Y. 241 172
Nat. Tradesman's Bk. v. Wetmore, 124 N. Y. 241 192
Nat. Tradesmen's Bk. v. Wetmore, 124 N. Y. 241 194
National Tradesmen's Bk. v. Wetmore, 124 N. Y. 241 298
Neal v. Foster, 13 Sawy. 236; 34 Fed. Rep. 496 247
Neator v. Everet, 10 N. B. R. 421 368
Nelson v. Hill, 46 U. S. 127 102
Nelson v. Hill, 46 U. S. 127 103
Neusbaum v. Keim, 24 N. Y. 325 213
Neustadt v. Joel, 2 Duer 530 170
Nevers v. Hack, 138 Ind. 260 126
Newton v. Porter, 69 N. Y. 133 289
Newdigate v. Jacobs, 9 Dana 18 237
Newland v. Reilley, 85 Mich. 151 206
Newton v. Bronson, 3 Kern. 587 59
Newell v. Supervisors, 37 Ill. 253 149
In re N. Y. Kerosene Oil Co., 3 N. B. R. 125 351
N. J. Lumber Co. v.Ryan, 41 Atl. 839 81
New York Life Ins. Co. v. Davis, 94 Va. 427 319
New York Security & T. Co. v. Lombard Invest. Co., 75 Fed. Rep. 172 333
New v. Bass, 92 Va. 383 295
Newman v. Willetts, 52 Ill. 101 5
Newman v. Willetts, 52 Ill. 98 9
Newman v. Willetts, 52 Ill. 98 10
Newman v. Willetts, 52 Ill. 98 20
Newman v. Willetts, 52 Ill. 98 52
Newman v. Willetts, 52 Ill. 98 66
Newman v. Willetts, 52 Ill. 98 171
Newman v. Willetts, 52 Ill. 98 196
Newman v. Willetts, 52 Ill. 98 198
Newman v. Willetts, 52 Ill. 98 209
Newman v. Willetts, 52 Ill. 98 251
Newman v. Willetts, 60 Ill. 519 279
Newman v. Van Duyne, 42 N. J. Eq. 485 123
Newman v. Van Duyne, 42 N. J. Eq. 485 211
Nickerson v. Ruger, 76 N. Y. 279 288

Page
Nickell v. Hundley, 10 Gratt. 336..... 271
Nichols v. Levy, 72 U. S. 433..... 36
Nicholson v. Leavitt, 4 Sandf. N. Y. 252..... 28
Nicholson v. Leavitt, 4 Sandf. N. Y. 252..... 37
Nichols v. Eaton, 91 U. S. 716..... 271
Nichols v. Eaton, 91 U. S. 716..... 272
Nill v. Phelps, 46 N. Y. Supp. 662..... 22
Niver v. Crane, 98 N. Y. 40..... 23
Niver v. Crane et al., 98 N. Y. 40..... 277
Niver v. Crane et al., 98 N. Y. 40..... 279
Nienwankamp v. Ullman, 47 Wis. 168..... 229
Nicols v. Eton, 91 U. S. 716..... 277
Norton v. Clark, 18 Nev. 247..... 199
Norcutt v. Dodd, 1 Cr. & Ph. 100..... 113
Norton v. Norton, 5 Cush. 524..... 111
The North Hudson M. B. & L. As. v. Childs, 86 Wis. 292..... 189
North Hudson B. & L. Asso. v. Childs, 86 Wis. 292..... 216
North Hudson B. & L. As. v. Childs, 86 Wis. 292..... 299
North American F. Ins. Co. v. Graham, 5 Sandf. 197..... 170
North Am. F. Ins. Co. v. Graham, 5 Sandf. 197..... 171
N. A. Fire Ins. Co. v. Graham, 5 Sandf. 197..... 176
Northern Ind. R. R. Co. v. the Mich. Central R. R. Co., 15 Howard 233 60
Northern Pacific R. Co. v. Amato, 144 U. S. 465..... 160
Norton v. Boyd, 3 How. 426..... 366
Norris v. Hensley, 27 Cal. 439..... 276
In re Northrup, 1 Am. B. R. 427..... 373
Northwestern Iron Co. v. Land & River Imp. Co., 92 Wis. 487.. 312
Northwestern Iron Co. v. Central Tr. Co., 90 Wis. 570..... 205
Noyes v. Hubbard, 64 Vt. 302..... 391
In re Nunn, 1 N. B. N. 427..... 393
Nusbaum v. Stein, 12 Md. 315..... 52
Nugent v. Nugent, 70 Mich. 52..... 189

O

Oakley v. Pound, 14 N. J. Eq. 178..... 34
Oakley v. Pound, 14 N. J. Eq. 178..... 170
Oakley v. Pound, 14 N. J. Eq. 178..... 299
O'Brien v. Coulter, 2 Blackf. 421..... 193
O'Brien v. Coulter, 2 Blackf. 421..... 200
O'Brien v. Coulter, 2 Blackf. 421..... 202
O'Brien v. Stambach, 101 Ia. 40..... 24
O'Brien, Mary J., 24 Wis. 547..... 229
Ocean Nat. Bk. v. Olcott, 46 N. Y. 12..... 183

Page
Ocean Nat. Bk. v. Olcott, 46 N. Y. 12..... 188
Ocean Nat. Bk. v. Olcott, 46 N. Y. 12..... 253
Ocean National Bank v. Carll, 55 N. Y. 440..... 288
Offutt v. King, 1 MacArthur 312..... 191
Ogilvie v. Knox Ins. Co. 22 How. 380..... 7
Ogilvie v. Knox Ins. Co., 63 U. S. 380..... 83
Ogilvie v. Knox Ins. Co., 63 U. S. 380..... 179
Oglesby v. Gilmore, 5 Ga. 56..... 111
In re Ogles, 1 N. B. N. 400..... 394
In re Ohio Co-operative Shear Co., 1 N. B. N. 477..... 368
Oliphant v. Hartley, 32 Ark. 465..... 189
Oleson v. Bank of Tacoma, 15 Wash. 148..... 310
Olney v. Tanner, 10 Fed. Rep. 101; 18 Do. 636..... 232
Olney v. Tanner, 10 Fed. Rep. 101; 18 Do. 636..... 318
Olney v. Tanner, 10 Fed. Rep. 101; 18 Do. 636..... 321
Olney v. Tanner, 10 Fed. Rep. 101; 21 Blatchf. 540..... 326
Olney v. Tanner, 22 Blatchf. 540..... 383
Olney v. Tanner, 22 Blatchf. 540..... 384
O'Neil v. Birmingham Brew. Co., 101 Ala. 383..... 114
Ontario Bk. v. Mumford, 2 Barb. Ch. 596..... 41
Ortley v. Messere, 7 Johns. Ch. 139..... 111
Osgood v. Laytin, 48 Barb. 463; S. C. Affirm. in 5 Abb. Pr. N. S. 9. 224
Osgood v. Laytin, 48 Barb. 463; 5 Abb. Pr. U. S. 1..... 317
Osterhoudt v. Rigney, 98 N. Y. 222..... 90
In re Otawa, 58 L. T. N. S. 85..... 391
Owen v. Dupignac, 9 Abb. Pr. 180..... 230
Oxley v. Lane, 35 N. Y. 340..... 276

P

Pacific Bk. v. Robinson, 57 Cal. 520..... 32
Palmer v. Bank of Zumbrota, Minn. 75 N. W. 380..... 322
Palmer v. Thayer, 28 Conn. 237..... 113
Palmer v. Colville, 63 Hun, 536..... 227
Palo Alto Banking, etc., Co. v. Mahar, 65 Ia. 74..... 102
Pardee v. De Cala, 7 Paige Ch. 132..... 210
Parker v. Flagg, 127 Mass. 28..... 110
Parker v. Smith, 12 N. B. R. 474..... 382
Parker v. Harrison, 42 N. Y. Supr. Ct. 150..... 271
Parker v. Stoughton Mill Co., 91 Wis. 174..... 326
Parker v. Conner, 93 N. Y. 118..... 50
Parker v. Conner, 93 N. Y. 118..... 126
In re Parker, 54 L. J. Chancery, 694..... 310
Parker v. Conner, 93 N. Y. 278, 282..... 125
Parmelee v. Egan, 7 Paige Ch. 610..... 86

Page
Parmelee v. Egan, 7 Paige Ch. 610 97
Parsons v. Bowne, 7 Paige Ch. 354 81
Parsons v. Bowne, 7 Paige Ch. 354 95
Parkman v. Welch, 19 Pick. 231 143
Parr v. Fumbanks, 11 Lea 391 155
Partridge v. Cavender, 96 Mo. 452 273
Partridge v. Gopp, 1 Eden Ch. 163 72
Parmelee v. Egan, 7 Paige Ch. 610 177
Parkinson v. Truesdale, 3 Scam. 369 143
Partee v. Kartrecht, 54 Miss. 66 25
Partee v. Matthews, 53 Miss. 140 71
Partee v. Matthews, 53 Miss. 140 170
Parmenter Co. v. Warren, 1 Am. B. R. 39 377
Parish v. Lewis, Freeman's Chy. 299 195
Paschal v. Acklin, 27 Tex. 173 59
Paschall v. Hailman, 4 Gilm. 285 293
Paste v. Love, 19 Fla. 634 199
Pattberg v. Louis Pattberg & Bros., 55 N. J. Eq. 604 332
Patterson v. Lynde, 106 U. S. 519 7
Patterson v. Lynde, 112 Ill. 196 54
Patterson v. Lynde, 112 Ill. 196 59
Patterson v. Lynde, 106 U. S. 519 98
Patterson v. Lynde, 112 Ill. 196 174
Patterson v. Lynde, 112 Ill. 196 195
Patterson v. Lynde, 112 Ill. 196 197
Patchen v. Rofkar, 12 App. Div. 475, 42 N. Y. Supp. 35 194
Pavey v. Am. Ins. Co., 56 Wis. 221 183
Payne v. Becker, 87 N. Y. 153 35
Payne v. Hook, 74 U. S. 425 64
Payne v. Sheldon, 63 Barb. 169 196
Pearce v. Jennings, 94 Ala. 524 314
Pearce v. Olney, 20 Conn. 544 60
Pearson v. Maxfield, 51 Ia. 76 169
Pearson v. Maxfield, 51 Ia. 76 199
Pease v. Guenther, 61 Ill. App. 345 18
Peay v. Morrison's Ex'r's, 10 Gratt. 149 200
Peck Lumber Mnfg. Co. v. Mitchell, 1 Am. B. R. 701 367
Peck v. School Dist., 21 Wis. 516 75
Peck v. Burdett, 1 Paige 305 328
Pecos Irrigation & Improvement Co. v. Olson, 63 Ill. App. 313 .. 209
In re Peebles, 13 N. B. R. 149 368
Pelzer v. Hughes, 27 S. C. 408 52
Pelletire v. Greenville Lumber Co., 123 N. C. 596 329
Pennell v. Lamar Ins. Co., 73 Ill. 303 98
Pennell v. Lamar Ins. Co., 73 Ill. 303 106
Pennell v. Lamar Ins. Co., 73 Ill. 303 247
Penny v. Taylor, 10 N. B. R. 200 377

Page
Pennell v. Deffell, 4 De G. M. & G. 372..... 281
Pennell v. Deffell, 4 De G. M. & G. 372..... 289
Pennington v. Sole, 1 N. B. R. 157..... 364
Penniman v. Norton, 1 Barb. Ch. 246..... 89
Penniman v. Norton, 1 Barb. Ch. 246..... 116
Penniman v. Norton, 1 Barb. Ch. 246..... 163
Penn v. Lord Baltimore, 1 Ves. Sr. 444..... 37
Penn v. Lord Baltimore, 1 Ves. Sr. 444..... 59
Penn v. Lord Baltimore, 2 Lead. Cas. in Eq. 1806 (4th Am. Ed. from 4th London Ed.)..... 60
Pennoyer v. Neff, 95 U. S. 714..... 37
Pennoyer v. Neff, 95 U. S. 714..... 250
Pennimon v. Norton, 1 Barb. Ch. 246..... 88
Pendleton v. Perkins, 49 Mo. 565..... 200
Pence v. Croan, 51 Ind. 336..... 126
People's etc., Bk. v. Bates, 120 U. S. 556..... 260
People v. Van Buren, 136 N. Y. 252..... 187
People, etc., v. Van Buren, 136 N. Y. 252..... 198
People ex rel. v. Omaha, 2 Neb. 166..... 39
People's Nat. Bank v. Loeffert, C. P. 28 Pitts. L. J. N. S. 22..... 31
People v. Ridgley, 21 Ill. 65..... 55
People v. Weigley, 155 Ill. 491..... 154
People v. Globe Sav. Bk., 14 Nat'l Corp. Rep. 723..... 311
Perry v. Sharpe, 8 Feb. Rep. 15..... 187
Perry, Re B. T., 30 Wis. 268..... 230
Perkins v. Hays, 3 Gray 405..... 42
Perkins v. Hays, 3 Gray 405..... 271
Peters v. Bain, 133 U. S. 670..... 19
Peters v. Bain, 133 U. S. 670..... 185
Petree v. Brotherton, 133 Ind. 692..... 27
Petree v. Brotherton, 133 Ind. 692..... 220
Peterson v. Gittings, 77 N. W. 1056 (Ia.)..... 25
Peterson v. Gittings, 77 N. W. 1056..... 74
In re Peterson, 1 Am. B. R. 254..... 392
Petway v. Hoskins, 12 Lea 107..... 177
Petway v. Hoskins, 12 Ia. 107..... 244
Petefish v. Buck, 56 Ill. App. 149..... 35
Pettit v. Candler, 3 Wend. 618..... 143
Pettit v. Shepherd, 5 Paige Ch. 493..... 18
Peyton v. Lamar, 42 Ga. 131..... 170
Pharis v. Leachman, 20 Ala. 662..... 281
Phelps v. Bowdoin, 14 N. B. R. 43..... 365
Phelps v. Curts, 80 Ill. 109..... 32
Phelps v. Curts, 38 Ill. App. 93..... 152
Phelps v. Curts, 80 Ill. 109..... 159
Phelps v. Curts, 80 Ill. 109..... 263
Phelps v. Foster, 18 Ill. 309..... 191

Page
Phelps v. Foster, 18 Ill. 309 51
Phelps v. Foster, 18 Ill. 309 52
Phelps v. Foster, 18 Ill. 309 298
Phelps v. McDonald, 99 U. S. 298 37
Phelps v. McDonald, 99 U. S. 298 59
Phelps v. Sellick, 8 N. B. R. 390 370
Phenix Ins. Co. v. Abbott, 127 Mass. 558 43
Phillips v. Ash, 63 Ala. 414 38
Phillips v. Demoss, 14 Ill. 410 180
Phillips v. Overton, 4 Hey. 291 141
Phoenix Ins. Co. v. Abbott, 127 Mass. 558 105
Pierstoff v. Jorges, 86 Wis. 128 25
Pierstoff v. Jorges, 86 Wis. 128 32
Pierstoff v. Jorges, 86 Wis. 128 68
Pierstoff v. Jorges, 86 Wis. 128 75
Pierstoff v. Jorges, 86 Wis. 128 131
Pierstoff v. Jorges, 86 Wis. 128 218
Pierstoff v. Jorges, 86 Wis. 128 220
Pirie v. Hughes, 43 Wis. 531 215
Pierce v. Milwaukee Cons. Co., 38 Wis. 253 10
Pierce v. the Milwaukee Cons. Co., 38 Wis. 253 83
Pierce v. Milwaukee C. Co., 38 Wis. 253 179
Pierce v. Rich, 76 Mich. 648 44
Pierce v. Rich, 76 Mich. 648 176
Pike v. Miles, 23 Wis. 164 14
Pillsbury v. Kingon, 31 N. J. Eq. 619 112
Pillsbury v. Kingon, 33 N. J. Eq. 287 110
Pillsbury v. Kingon, 33 N. J. Eq. 287 113
Pillsbury v. Dugan, 9 Ohio 117 181
Pilling v. Otis, 13 Wis. 495 257
Pinnock v. Clough, 16 Vermont 500 47
Pinneo v. Goodspeed, 104 Ill. 184 128
Pinneo v. Goodspeed, 104 Ill. 184 151
Piper v. Piper, 2 N. H. 439 199
Pittsburgh Carbon Co. v. McMillin, 119 N. Y. 46 321
In re Pitlekow, 1 N. B. N. 234 353
In re Pitlekow, 92 Fed. 901 374
Platt v. Archer, 6 N. B. R. 465; 9 Blatchf. 559; Fed. Cas. 11,213. 342
Platt v. Archer, 6 N. B. R. 465 354
Platt v. Cadwell, 9 Paige Ch. 386 210
Platt v. Cadwell, 9 Paige Ch. 386 214
Platt v. Cadwell, 9 Paige Ch. 386 227
Platt v. Muroe, 34 Barb. 291 229
Platt v. Preston, 19 N. B. R. 241 358
Plume v. Caldwell, 136 Ill. 163 245
Plume & A. Mfg. Co. v. Baldwin, 87 Fed. Rep. 785 195
Postlewait v. Howes, 3 Ia. 365 176

Page
Postlewait v. Howes, 3 Ia. 365 195
Poling v. Huffman, 39 W. Va. 320 138
Porter v. Williams, 9 N. Y. 142 224
Porter v. Williams, 9 N. Y. 142 317
Porter v. Williams, 9 N. Y. 142 318
Porter v. Williams, 9 N. Y. 142 321
Poineer v. Bagnall, 49 N. J. L. 226 211
Post v. Rouch, 26 Fla. 442 170
Post v. Roach, 26 Fla. 442 252
Post v. Mackall, 3 Bland Md. 486 158
Pope's Exrs. v. Elliott, 8 B. Mon. 56 271
Pope's Exrs. v. Elliott, 8 B. Mon. 56 273
Pope v. Solomons, 36 Ga. 541 200
Pope v. Mead, 99 N. Y. 201 35
Poole v. Daly, 1 Mackey 460 156
Potter v. Everitt, 7 Ired. Eq. 152 35
Potter v. Dear, 95 Cal. 578 71
Potter v. Dear, 95 Cal. 578 83
Potter v. Phillips, 44 Ia. 353 82
Potter v. Couch, 141 U. S. 296 275
Powers v. Blue Grass Bldg. & L. Asso., C. C. D. Ky. 86 Fed. Rep. 705 319
Powell v. Spaulding, 3 G. Green 443 102
Pratt v. Babcock, 10 Paige N. Y. 295 163
Preston v. Spaulding, 120 Ill. 208 180
Preston v. Spaulding, 120 Ill. 208 266
Preston v. Colby, 117 Ill. 477 67
Preston v. Colby, 117 Ill. 477 170
Prest. etc., v. Trenton City Bridge, 13 N. J. Eq. 46 95
Price v. Price, 21 App. Div. 597 317
In re Price, 1 Am. B. R. 606 341
In re Price, 1 Am. B. R. 606 352
Price v. Abbott, 17 Fed. Rep. 506 64
Pringle v. Phillips, 5 Sandf. 157 125
Prout v. Vaughn, 52 Vt. 451 14
Produce Bank, etc., v. Morton, 40 N. Y. Supr. Ct. 328 25
Produce Bk. v. Morton, 67 N. Y. 199 188
Pudey v. Gardner, 21 W. Va. 469 122
Pudney v. Griffiths, 6 Abb. Pr. 211 227
Pullman v. Stebbins, 51 Fed. Rep. 10 106
Pullman Palace Car Co. v. American Loan & T. Co., 55 U. S. App. 170; 84 Fed. Rep. 18 336
Putney v. Fletcher, 148 Mass. 247 105
Putney v. Freisleben, 32 S. C. 492 266
Putney v. Whitmire, 66 Fed. Rep. 385 189
Puterbaugh v. Elliott, 22 Ill. 157 181
Pullis v. Robison, 73 Mo. 201 244

Q

Page
Quarles v. Grigsby, 31 Ala. 172 96
Quinn v. People, 146 Ill. 275..... 81
Quinn v. People, 146 Ill. 275..... 130
Quinn v. People, 146 Ill. 275..... 131
Quinn v. People, 146 Ill. 275..... 155
Quinnipiac Brew. Co. v. Fitzgibbons, 71 Conn. 80..... 16

R

Ragsdole v. Holmes, 1 S. C. 91..... 25
Randolph v. Farmers' L. & T. Co., 91 Tex. 605..... 338
Rand, McNally & Co. v. Mutual Fire Ins. Co., 58 Ill. App. 528.... 312
Randall v. Sunderland, 4 N. B. R. 4..... 388
Randall v. Sunderland, 4 N. B. R. 4..... 389
Ransom v. Jones, 1 Scam. 291..... 180
Randolph v. Daly, 16 N. J. Eq. 313..... 28
Randolph v. Daly, 16 N. J. Eq. 313..... 34
Randolph v. Daly, 16 N. J. Eq. 313..... 74
Randolph v. Daley, 16 N. J. Eq. 313..... 86
Randolph v. Daly, 16 N. J. Eq. 313..... 92
Randolph v. Daly, 16 N. J. Eq. 313..... 211
Rankine v. Elliott, 16 N, Y. 377..... 55
Rankin v. Rothschild, 78 Mich. 10..... 84
Rankin v. Rothschild, 78 Mich. 10..... 95
Rankin v. Rothschild, 78 Mich. 10..... 144
Rankin v. Rothschild, 78 Mich. 10..... 178
Rankin v. Rothschild, 78 Mich. 10..... 308
Rankin v. Wilsey, 17 Ia. 463..... 46
Rapp v. Whittier, 113 Cal. 429..... 286
Rappleye v. International Bk., 93 Ill. 396..... 177
Rappleye v. International Bk., 93 Ill. 396..... 213
Rappleye v. International Bk., 93 Ill. 396..... 244
Rappleye v. International Bk., 93 Ill. 396..... 245
Ratcliffe v. Sangston, 18 Md. 383..... 288
Ratcliffe v. Sangston, 18 Md. 383..... 289
Rau v. Von Zedlitz, 132 Mass. 164..... 220
Rawdon v. Benedict, 1 Ch. Sent. 48..... 211
Raynor v. Mintzer, 67 Cal. 159..... 87
Reardon v. Henry, 82 Ia. 134..... 226
Reboul's Heirs v. Behrens, 5 La. 79..... 139
Redmond v. Wemple, 4 Edw. Chy. 221..... 164
Redden v. Potter, 16 Ill. App. 265..... 196
Reddington v. Lanahan, 59 Md. 429..... 281
Reel v. Livingston, 34 Fla. 377..... 23
Reed v. Bott, 100 Mo. 62..... 124
Reed v. Bullington, 11 N. B. R. 408..... 360

Page
Reeder v. Speake, 4 S. C. 293 192
Reed v. Wheaton, 7 Paige Ch. 663 74
Reed v. Wheaton, 7 Paige Ch. 663 203
Reed v. Wheaton, 7 Paige Ch. 663 209
Reed v. McIntyre, 98 U. S. 507 256
Reed v. McIntyre, 98 U. S. 507 379
Regenstein v. Pearlstein, 30 S. C. 192 52
Reid v. Southworth, 71 Wis. 288 216
Reid M. & Co. v. Cross, 41 Ohio L. J. 135; 31 Chicago Legal News 216 236
Reid v. Sheffy, 75 Ill. App. 136 88
Reitzell v. Miller, 25 Ill. 53 293
Reinhardt v. Gartsell, 33 Ark. 727 67
Remington v. Samana Bay Co., 140 Mass. 394 55
Re Remington, 7 Wis. 643 205
Re Mary J. O'Brien, 24 Wis. 547 229
Re B. F. Perry, 30 Wis. 268 230
Re Hallett, 13 Ch. Div. 696 281
Re Hallett, 13 Ch. Div. 696 289
Renaud v. O'Brien, 35 N. Y. 99 208
Renaud v. O'Brien, 35 N. Y. 99 227
In re Republican Ins. Co., 8 N. B. R. 197 342
Reubens v. Joel, 13 N. Y. 488 189
Reubens v. Joel, 13 N. Y. 488 170
Reubens v. Joel, 13 N. Y. 488 299
In re Reynolds, 9 N. B. R. 50; Fed. Cas. 11,723 378
Rhodes v. Cousins, 6 Rand. 188 52
Rice v. Stone, 1 Allen 566 35
Rice v. Barnard, 20 Vt. 479 170
Rice v. Perry, 61 Me. 145 126
Rice v. Rice, 108 Ill. 199 112
Rich v. Levy, 16 Md. 74 52
Richards v. Griggs, 16 Mo. 416 199
In re Richard 1 N. B. N. 487 359
Richards v. People, 81 Ill. 551 59
Richards v. People, 81 Ill. 551 327
Richardson v. Lester, 83 Ill. 55 199
Richeson v. Crawford, 94 Ill. 165 112
Richmond v. Irons, 121 U. S. 27 80
Richter v. Leiby, 75 N. W. 82 296
In re Richardson, 2 N. B. R. 74 372
Rider v. Mason, 4 Sandf. Ch. 351 270
Rider v. Mason, 4 Sandf. Ch. 351 279
Rife v. Geyer, 59 Pa. St. 393 273
Rinchey v. Stryker, 28 N. Y. 45 189
Rinchey v. Stryker, 28 N. Y. 45 198
Rinchey v. Stryker, 28 N. Y. 45 299

Page
Riopelle v. Doellner, 26 Mich. 102 146
Rippon v. Norton, 2 Beav. 63 271
Rison v. Knapp, 4 N. B. R. 144 389
Rison v. Powell, 28 Ark. 427 64
Ritterband v. Maryatt, 12 N. Y. Leg. Ob. 158 227
Rives v. Walthall, 38 Ala. 329 135
Roane v. Pickett, 7 Ark. 510 87
Robbins v. Wells, 26 How. N. Y. Pr. 15; 18 Abb. Pr. 191 205
Roberts v. Albany, etc., R. Co., 25 Barb. 662 235
Roberts v. Albany, etc., 25 Barber 662 241
Roberts v. Stevens, 84 Me. 325 273
Robertson v. Parks, 3 Md. Ch. 65 138
In re Robinson, L. R. 27 Chy. Div. 160 391
Robinson v. Trofitter, 109 Mass. 478 34
Robert v. Hodges, 16 N. J. Eq. 299 17
Robert v. Hodges, 16 N. J. Eq. 299 74
Robert v. Hodges, 16 N. J. Eq. 299 87
Robert v. Hodges, 16 N. J. Eq. 299 94
Robert v. Hodges, 16 N. J. Eq. 299 199
Robie v. Flanders, 33 N. H. 524 35
Robinson v. Campbell, 3 Wheat. 212 174
Robinson v. Davis, 11 N. J. Eq. 302 102
Robinson v. Smith, 3 Paige Ch. 222 89
Robinson v. Stewart, 10 N. Y. 189 143
Robinson v. Stewart, 10 N. Y. 189 189
Roby v. Cossitt, 78 Ill. 638 149
In re Rockwood, 1 N. B. N. 134 382
Rockford v. Hackman, 9 Hare 475 271
Rockwell v. Portland Sav. Bk. 31 Ore. 431 336
Rodman v. Harvey, 102 N. C. 1 318
Rogers v. Cherrier, 75 Wis. 54 215
Rogan v. Williams, 63 Tex. 123 220
Rogers v. Murray, 3 Paige, 390, 391 277
Rogers v. Murray, 3 Paige, 390, 391 279
Rogers v. King, 8 Paige Ch. 210 138
Rollins v. Staver Wagon Co., 80 Ia. 380 249
Rolfe v. Burnham, 110 Mich. 660 317
Romaine v. Chauncey, 129 N. Y. 566 391
Romaine v. Hendrickson, 24 N. J. Eq. 231 88
In re Romanow, 1 Am. B. R. 461 381
Rome Bank v. Haselton, 15 Lea. 216 102
Roosevelt v. Thurman, 1 Johns. Ch. 220 276
Root v. Woolworth, 150 U. S. 401 44
Rorback v. Dorsheimer, 25 N. J. Eq. 516 122
Rorback v. Dorsheimer, 25 N. J. Eq. 516 128
Rose v. Choteau, 11 Ill. 167 59
Roseboom v. Whittaker, 132 Ill. 81 237

Page
Rosenfield v. Goldsmith (Ky), 11 Ky. L. Rep. 662..... 262
Ross-Mehan Brake Shoe Foundry Co. v. Southern Malleable Iron Co., 72 Fed. Rep..... 957
Rossman v. Mitchell, Minn. 75 N. W. 1053..... 323
Rothchild v. Hoge, 43 Fed. Rep. 97..... 266
Rounds v. McCormick, 114 Ill. 252..... 7
Rountree v. McKay, 6 Jones (N. C.) Eq. 87..... 84
Rouse v. Letcher, 156 U. S. 401..... 64
Rowand v. Finney, 96 Pa. St. 192..... 129
Rozek v. Redzinski, 87 Wis. 525..... 9
Rozek v. Redzinski, 87 Wis. 525..... 14
Ruhlender v. Chesapeake, etc. R. Co., 91 Fed. Rep. 5..... 337
U. S. Rubber Co. v. American Oak Leather Co., 82 Fed. Rep. 248. 315
Ruckman v. Conover, 37 N. J. Eq. 583..... 44
Runals v. Harding, 83 Ill. 75..... 298
Runals v. Harding, 83 Ill. 75..... 319
In re Rupp, 4 N. B. R. 25..... 392
Russell v. Milton, 133 Mass. 180..... 292
Russell v. Rogers, 10 Wend. 474, 479..... 257
Russell v. Grinnell, 105 Mass. 425..... 271
Russell v. Allen, 10 Paige 249..... 277
Russell v. Grinnell, 105 Mass. 425..... 42
Russell v. Clark's Ex., 11 U. S. 69..... 80
Russell v. Clark, 11 U. S. 69..... 198
Russell v. Clark, 7 Cranch. 69..... 201
Russell v. Clark, 11 U. S. 69..... 202
Russell v. Chi. Trust & Savings Bank, 139 Ill. 538..... 70
Russell v. Chicago T. & S. Bk. 139 Ill. 538..... 101
Russell v. Chicago Trust & Sav. Bank, 139 Ill. 538, 17 L. R. A. 345. 103
Russell v. Chicago T. & S. Bk., 139 Ill. 538..... 108
Russell v. Chicago Tr. & S. Bk., 139 Ill. 538..... 138
Russell v. Chicago T. & S. Bk., 139 Ill. 538..... 174
Russell v. Chicago T. & T. Bk., 139 Ill. 538..... 177
Russell v. Chi. T. & S. Bk., 139 Ill. 538..... 185
Russell v. Chi. Trust & Savings Bk., 139 Ill. 538..... 196
Russell v. Chicago T. & T. Co., 139 Ill. 538..... 224
Russell v. Chicago T. & S. Bk., 139 Ill. 538..... 237
Russell v. Chicago T. & S. Bk., 139 Ill. 538..... 244
Ryall v. Rolle, 1 Atk. 165..... 72
Ryan v. Krise, 89 Va. 728..... 36
Ryttenberg v. Keesl, 39 S. C. 203..... 156

S

Sackhoff v. Vandegrift, 98 Ala. 192..... 314
Safford v. Douglas, 4 Edw. Ch. 537..... 244
Sage v. Memphis, etc., R. Co., 125 U. S. 361..... 204

Page
Sage v. Mosher, 28 Barb. 287 102
Sagory v. Dobis, 3 Sandf. Ch. 466 7
Sale v. Lawson, 4 Sandf. 718 228
Sale v. McLean, 29 Ark. 612 74
In re Salmons, 2 N. B. R. 19 368
Salter v. Williamson, 1 Green Ch. 480 107
Salter v. Hilgen, 40 Wis. 363 229
Sampson v. Taylor, 1 Ch. Sent. 89 43
Sanger v. Upton, 91 U. S. 56 7
Sanger v. Upton, 91 U. S. 56 54
Sanger v. Upton, 91 U. S. 56 98
Sanger v. Upton, 91 U. S. 56 179
Sanger v. Bancroft, 12 Gray 365 35
Sanger v. Bancroft, 12 Gray 365 190
Sands v. E. S. Greeley Co., 83 Fed. Rep. 772 338
Sands v. E. S. Greeley & Co., 80 Fed. Rep. 195 344
Sanderson v. Snow, 68 Ill. App. 384 214
Sanderson v. Stockdale, 11 Md. 563 196
Sanderson v. Bradford, 10 N. H. 260 303
San Antonio & G. S. R. Co. v. Davis, 2 Am. & Eng. Corp. Cas. N. S. 374 52
Sanderson v. Broadwell, 82 Cal. 132 261
Sanderson v. Broadwell, 82 Cal. 132 265
Sargent v. Salmond, 27 Me. 539 72
Savage v. Murphy, 34 N. Y. 508 27
Savage v. Murphy, 34 N. Y. 508 233
Savage v. Murphy, 34 N. Y. 508 257
Savery v. Browning, 18 Ia. 246 176
Savings & T. Co. v. Bear Valley T. Co., 89 Fed. Rep. 32 337
Sawyer v. Bradshaw, 125 Ill. 440 137
Sawyer v. Hoag, 84 U. S. 610 7
Sawyer v. Hoag, 84 U. S. 610 98
Sawyer v. Hoag, 84 U. S. 610 179
Sawyer v. Levy, 162 Mass. 190 260
Sawyer v. Birchmore, 1 Keen 391 101
Sawyer v. Moyer, 105 Ill. 192 59
Sawyer v. Moyer, 105 Ill. 192 162
Sayre v. Fredericks, 16 N. J. Eq. 205 143
Sayre v. Fredericks, 16 N. J. Eq. 205 148
Scanlan v. Murphy, 51 Minn. 536 178
Scheubert v. Honel, 152 Ill. 313 210
Scheubert v. Honel, 50 Ill. App. 597; 152 Ill. 313 227
Scheubert v. Honel, 152 Ill. 313 228
Schlesinger v. Sherman, 127 Mass. 206 42
Schlesinger v. Sherman, 127 Mass. 206 46
Schlesinger v. Sherman, 127 Mass. 206 74
Schuerman v. Matthews, 78 Wis. 309 137

Page
Schnell v. Clements, 73 Ill. 613 ... 103
School Dist. v. Gage, 39 Mich. 484 ... 39
Schroetter v. Brown, 59 Ill. App. 24 ... 10
Schrotter v. Brown, 59 Ill. App. 24 ... 298
Schroeder v. Babbitt, 108 Mo. 289 ... 261
Schluter v. Harvey, 65 Cal. 158 ... 261
Schreck, 1 Am. B. R. 366 ... 384
In re Schnepf, 1 N. B. R. 190 ... 373
In re Schnepf, Fed. Cas. No. 12,471 ... 375
Schermerhorn v. Negas, 1 Denio 448 ... 276
Schultz v. Blackford, 9 Lea. 431 ... 278
Schwed v. Smith, 106 U. S. 188 ... 64
Scoville v. Thayer, 105 U. S. 143 ... 7
Scoville v. Thayer, 105 U. S. 143 ... 54
Scott v. Neeley, 140 U. S. 106 ... 52
Scott v. Neeley, 140 U. S. 106 ... 66
Scott v. Neeley, 140 U. S. 106 ... 74
Scott v. Neeley, 140 U. S. 106 ... 173
Scott v. Neeley, 140 U. S. 106 ... 174
Scott v. Neeley, 140 U. S. 106 ... 185
Sconton v. Benders, 3 How. Pr. 185 ... 240
Scott v. McMillen, 1 Little 302 ... 192
Scott v. McMillen, 1 Little 302 ... 200
Scott v. Cheatham, 78 Va. 82 ... 155
Scott v. Grant, 10 Paige N. Y. 485 ... 162
Scott v. Scholey, 8 East. 467 ... 279
Scott v. Indianapolis, etc., 48 Ind. 75 ... 71
Scott v. Kelley, 12 N. B. R. 96 ... 358
Scott v. Nevins, 6 Duer 672 ... 270
Scott v. Nevins, 6 Duer 672 ... 329
Scott v. Bennett, 1 Gilm. 646 ... 89
Scott v. Bennett, 1 Gilm. 646 ... 90
Scott v. Bennett, 1 Gilm. 646 ... 91
Scripps v. King, 103 Ill. 469 ... 52
Scripps v. King, 103 Ill. 469 ... 66
Scripps v. King, 103 Ill. 469 ... 177
Scripps v. King, 103 Ill. 469 ... 193
Seaver v. Bigelows, 72 U. S. 208 ... 64
Seaver v. Bigelows, 72 U. S. 208 ... 161
Sears v. Choate, 146 Mass. 395 ... 33
Sears v. Choate, 146 Mass. 395 ... 42
Sears v. Starbird, 78 Cal. 225 ... 164
Searing v. Berry, 58 Ia. 20 ... 158
Security Sav. & L. Ass'n v. Moore, 151 Ind. 174 ... 310
Security Sav. & L. A. v. Moore, 151 Ind. 174 ... 323
Second Nat'l Bk. v. National S. Bk., 11 N. B. R. 49 ... 355
Second Ward Sav. Bk. v. Schranck, 100 Wis. 480 ... 327

Page
Second Ward Bk. v. Upmann, 12 Wis. 499..... 227
Second Ward Bk. v. Upmann, 12 Wis. 499..... 231
Sedgwick v. Place, 3 N. B. R. 35..... 340
Sedgwick v. Cleveland, 7 Paige Ch. 287..... 113
Sedgwick v. Menck, 6 Blatchf. 156..... 236
Sedgwick v. Menck, 1 B. R. 675..... 341
Sellman v. Sellman, 63 Ind. 520..... 85
Sewall v. Russell, 2 Paige Ch. 175..... 18
Sere v. Pilot, 6 Cranch. 332..... 112
Sercomb v. Catlin, 128 Ill. 556..... 37
Sercomb v. Catlin, 128 Ill. 556..... 59
Sercomb v. Catlin, 128 Ill. 556..... 281
Sercomb v. Catlin, 128 Ill. 556..... 303
Servis v. Nelson, 14 N. J. Eq. 94..... 281
Serra v. Hoffman, 17 N. B. R. 124..... 356
Serra v. Hoffman, 17 N. B. R. 124..... 358
Sexton v. Crockett, 23 Gratt. 857..... 86
Sexton v. Wheaton, 8 Wheat. 229..... 180
Seymour v. Briggs, 11 Wis. 196..... 226
Seymour v. McAvoy, 121 Cal. 438..... 87
Shaw v. Manchester, 84 Ia. 246..... 213
Shaw v. Dwight, 27 N. Y. 244..... 18
Shaw v. Dwight, 27 N. Y. 244..... 94
Shaw v. Dwight, 27 N. Y. 244..... 170
Shaw v. Dwight, 27 N. Y. 244..... 176
Shaw v. Dwight, 27 N. Y. 244..... 188
Shaw v. Dwight, 27 N. Y. 244..... 196
Shaw v. Dwight, 27 N. Y. 244..... 203
Shaffer v. Fritchery, 4 N. B. R. 179..... 363
Shaffer v. Fritchery, 4 N. B. R. 179..... 389
Sharp v. Teese, 9 N. J. L. 352..... 258
Shankland's Appeal, 47 Penn. St. 113..... 271
Shankland's Appeal, 47 Pa. St. 113..... 273
Shattuck v. Cassidy, 3 Edw. Ch. 152..... 59
Shawano Co. Bk. v. Koeppen, 78 Wis. 533..... 14
Shawano Co. Bank v. Koeppen, 78 Wis. 533..... 139
Shackleford v. Todhunter, 4 Ill. App. 271..... 134
Sharpe v. Earl of Scarborough, 4 Ves. 538..... 50
Sharpe v. Earl of Scarborough, 4 Ves. 538..... 73
Shand v. Hanley, 71 N. Y. 319..... 27
Shaw v. Hanley, 71 N. Y. 319..... 257
Shand v. Hanley, 71 N. Y. 319..... 315
Shawer v. Alterton, 151 U. S. 607, 622..... 125
Sheafe v. Sheafe, 40 N. H. 516..... 94
Shearman v. Bingham, 7 N. B. R. 49..... 356
Sherry v. Smith, 72 Wis. 339..... 75
Sherman v. Hogland, 54 Ind. 578..... 126

Page
Shellington v. Howland, 53 N. Y. 371, 375 184
Shellington v. Howland, 53 N. Y. 371 194
Shellington v. Howland, 53 N. Y. 371 202
Shenandoah V. Bk. v. Bates, 20 W. Va. 210 105
Shepherd v. Woodfolk, 10 Lea 593 237
Sheldon v. Dodge, 4 Denio 217 263
Sheldon v. Walbridge, 44 Mich. 251 146
Shephard v. Walker, 7 How. Pr. (N. Y.) 46 61
Shiner v. Huber, 19 N. B. R. 414 355
Shields v. Thomas, 59 U. S. 18 How. 253 185
Shipman v. Aetna Ins. Co., 29 Conn. 245 113
Shirley v. Long, 6 Rand. 735 113
In re Shilliday, 1 N. B. N. 475 368
Shipe v. Repass, 28 Gratt. (Va.) 716 240
Shirley v. Watts, 3 Atk. 200 171
Shirley v. Watts, 3 Atk. 200 172
Shirley v. Watts, 3 Atk. 200 173
Shirley v. Watts, 3 Atk. 200 182
Showalter v. Laredo Imp. Co., 83 Tex. 162 54
Shurts v. Howell, 30 N. J. Eq. 418 113
Shultz v. Hoagland, 85 N. Y. 464 262
Shubrick v. Shubrick, 1 McCord. (S. C.) Ch. 406 100
Shure v. Gough, 1 Ball. & B. 436 101
Shutts v. Fingar, 100 N. Y. 539 95
Shufeldt v. Boehm, 96 Ill. 560 51
Shufeldt v. Boehm, 96 Ill. 560 175
Shufeldt v. Boehm, 96 Ill. 560 177
Shufeldt v. Boehm, 96 Ill. 560 181
Shufeldt v. Boehm, 96 Ill. 560 190
Shufeldt v. Boehm, 96 Ill. 560 193
Shufeldt v. Boehm, 96 Ill. 560 200
Shufeldt v. Boehm, 96 Ill. 560 202
Shufeldt v. Boehm, 96 Ill. 560 219
Shufeldt v. Boehm, 96 Ill. 560 298
In re Sievers, 1 Am. B. R. 117 350
In re Sievers, 1 Am. B. R. 117 378
Siegel v. Andrews, 78 Ill. App. 611 31
Siegmund v. Ascher, 37 Ill. App. 122 139
In re Silverman, 1 N. B. N. 286 395
Sillick v. Mason, 2 Barb. (N. Y.) Ch. 79 270
Sillick v. Mason, 2 Barb. Ch. 79 279
Silloway v. Columbia Ins. Co., 8 Gray (Mass.) 199 61
Silloway v. Columbia Ins. Co., 8 Gray 199 105
Silloway v. Columbia Ins. Co., 8 Gray 199 190
Simpson v. Warren, 55 Me. 18 113
Sims v. Alfea, 72 Ga. 751 155
In re Sims, 16 N. B. R. 251 369

Page
Simar v. Canady, 53 N. Y. 298 102
Simms v. Tidwell, 98 Ga. 686 23
Simon v. Simon, 163 Pa. St. 292 22
Singer & Talcott Stone Co. v. Wheeler, 6 Ill. App. 225 31
Skeele v. Stanwood, 33 Me. 307 170
Skele v. Stanwood, 33 Me. 307 180
Skinner v. Terhune, 45 N. J. Eq. 565 328
Skinner v. James, 69 Wis. 605 183
Skinner v. Stuart, 15 Abb. Pr. 391; 13 Id. 442 129
Slattery v. Wason, 151 Mass. 266 279
Sloane v. Anderson, 57 Wis. 123 216
Sligh v. Shelton S. W. R. Co., 54 Pac. 763 27
Sligh v. Shelton S. W. R. Co., (Wash) 54 Pac. 763 325
Small v. Altwood, Younge 407 288
Small v. Bordinot, 9 N. J. Eq. 381 123
In re Smith, 2 Am B. R. 9 340
In re Smith, 2 Am. B. R. 9 350
In re Smith, 2 Am. B. R. 9 359
In re Smith, 2 Am. B. R. 9 377
In re Smith, 2 Am. B. R. 9 380
In re Smith, 1 N. B. R. 169 360
In re Smith, 1 N. B. N. 471 391
Smith's Adm. v. Wood, 42 N. J. Eq. 563 62
Smith's Adm. v. Wood, 42 N. J. Eq. 563 70
Smith's Adm. v. Wood, 42 N. J. Eq. 563 128
Smith v. Bromley, 2 Douglas 696 258
Smiley v. Bell, Mart. & Yerg. 378 41
Small v. Bondinot, 9 N. J. Eq. 381 128
Smith v. Ballantyne, 10 Paige Ch. 101 117
Smith v. Clay, 2 Amb. 645; S. C. 3 Bro. C. C. 693 note 62
Smith v. Clay, 2 Amb. 645 70
Smith v. Clay, 2 Amb. 646 164
Smith v. Craft, 17 Fed. Rep. 705 258
Smith v. Clark, 10 Md. 186 276
Smith v. Cuff, 6 M. & S. 160 258
Smith v. Crocheron, 2 Edw. Ch. 501 148
Smith Dimmick Lumber Co. v. Teague, (Ala.) 24 So. 4 309
Smith Dimmick Lumber Co. v. Teague, (Ala.) 24 So. 4 311
Smith v. Espy, 9 N. J. Eq. 160 113
Smith v. Ft. Scott H., & W. R. Co., 99 U. S. 398 52
Smith v. Ft. Scott, etc., R. Co., 99 U. S. 398 66
Smith v. F. Scott H., etc., R. Co., 99 U. S. 398 170
Smith v. Fitch, Clark's Ch. 265 209
Smith v. Grim, 26 Pa. St. 95 80
Smith v. Hardy, 36 Wis. 417 257
Smith v. Hurst, 10 Hare 30 170
Smith v. Ingles, 2 Ore. 43 188

Page
Smith v. Kearney, 2 Barb. Ch. 533 43
Smith v. Kearney, 2 Barb. N. Y. Ch. 533 292
Smith v. Lind, 29 Ill. 24 244
Smith v. Lind, 29 Ill. 24 246
Smith v. Los Angeles Co. Sup. Ct. 97 Cal. 348 67
Smith v. Moore, 37 Ala. 330 271
Smith v. Moore, 37 Ala. 327 291
Smith v. Mason, 6 N. B. R. 1 351
Smith v. Muisheid, 34 N. J. Eq. 4 198
Smalley v. Moss, 72 Ia. 171 196
Smith Middlings Purifier Co. v. McGroarty, 136 U. S. 237 161
Smith v. Mahony, 3 Daly 285 228
Smyth v. New Orleans C. & B. Co., 141 U. S. 656 66
Smith v. R. R. Co., 99 U. S. 398 180
Smith v. Reid, 134 N. Y. 568 15
Smith v. Railroad Co., 99 U. S. 399, 401 170
Smith v. Railroad Co., 99 U. S. 398 172
Smith v. Railroad Co., 99 U. S. 398, 401 173
Smith v. Railroad Co., 99 U. S. 398, 401 195
Smith v. Schwed, 9 Fed. Rep. 483 257
Smith v. Sheppar's heirs, 2 Hay 163, 349 193
Smith v. Superior Court, 97 Cal. 348 52
Smith v. Towers, 69 Md. 77 273
Smith v. Thompson, Walk. Ch. 1 227
Smith v. U. S. Express Co., 135 Ill. 279 324
Smith v. Vreeland, 16 N. J. Eq. 198 159
Smith v. Williams, 116 Mass. 510 80
Smith v. Weeks, 60 Wis. 94 11
Smith v. Weeks, 60 Wis. 94 226
Smith v. Weeks, 60 Wis. 94 228
Smith v. Wood, 42 N. J. Eq. 563 122
Smith v. Wood, 42 N. J. Eq. 563 123
Smith v. Wood, 42 N. J. Eq. 563 124
Snowden v. Dales, 6 Sim. 524 271
In re Snedaker, 3 N. B. R. 155 370
Snook v. Snetzer, 25 Ohio St. 516 59
Snook v. Snetzer, 25 Ohio St. 516 304
Sjoberg v. Security Sav. & L. Asso., 75 N. W. (Minn.) 1116 319
Societe Fonciere et Agricole des Etats Unis v. Milliken, 135 U. S. 304; 10 Sup. Ct. 823 165
Solinger v. Earle, 82 N. Y. 393 257
Solinger v. Earle, 82 N. Y. 393 258
Southard v. Benner, 72 N. Y. 424 112
Southard v. Benner, 72 N. Y. 424 170
Southard v. Benner, 72 N. Y. 424 178
Southern Bk. & T. Co. v. Folsom, 75 Fed. Rep. 929 339

Page
Southern v. Fisher, 16 N. B. R. 414 353
South Bend Toy Mfg. Co. v. Pierce F. & M. Ins. Co., 4 S. D. 173 113
South Carolina v. Port Royal & A. Ry. Co., 89 Fed. Rep. 565.. 334
South Carolina v. Port Royal, etc., R. Co., 89 Fed. Rep. 565.... 338
Somes v. Skinner, 16 Mass. 348 111
Pet. of Somler, 41 Wis. 517 229
Somerset Bk. v. Veghte, 42 N. J. Eq. 39 62
Somerset Bk. v. Veghte, 42 N. J. Eq. 39 70
Somerset Bk. v. Veghte, 42 N. J. Eq. 39 163
Sparhawk v. Cloon, 125 Mass. 263 42
Sparhawk v. Cloon, 125 Mass. 263 271
Spader v. Mural Decoration Co., 47 N. J. Eq. 18 337
Spader v. Davis, 5 Johns. Ch. 280; 20 Johns. 554 5
Spader v. Davis, 5 Johns. Ch. 280 32
Spader v. Davis, 5 Johns. Ch. 280 188
Spader v. Davis, 5 Johns. Ch. 280 236
In re Spencer, 1 N. B. N. 154 374
Spencer v. Cuyler, 17 How. Pr. 157 227
Sperling v. Levy, 10 Abb. Pr. 426 227
Spencer v. Brockway, 1 Ohio 122 215
Speiglemyer v. Crawford, 6 Paige Ch. 254 94
Spear v. Campbell, 4 Scam. 424 80
Spear v. Campbell, 4 Scam. 424 81
Spear v. Campbell, 4 Scam. 424 84
Spear v. Campbell, 4 Scam. 424 89
Spear v. Campbell, 4 Scam. 424 91
Spear v. Grant, 16 Mass. 9 7
Spear v. Wardell, 2 Barb. Ch. 291 177
Spelman v. Freedman, 130 N. Y. 421 189
Spelman v. Freedman, 130 N. Y. 421 180
Spencer v. Armstrong, 12 Heisk. 707 192
Spicer v. Ayres, 2 Thomp. & C. (N. Y.) 626 192
Spilman v. Johnson, 16 N. B. R. 145 369
Spindle v. Shreve, 111 U. S. 542 72
Sprague v. Noble, 3 Ill. App. 521 215
Spring v. Short, 90 N. Y. 538 178
Springer v. Vanderpool, 4 Edw. Ch. 362 112
Spokane v. Amsterdamsch, Trustees Kantoor, 18 Wash. 81... 316
Spring v. Randall, 107 Mich. 103 269
Springer v. Savage, 143 Ill. 301 271
Springer v. Savage, 143 Ill. 301 273
Stacy v. Randall, 17 Ill. 467 143
St. Albans v. Bush, 4 Vt. 58 217
Stamets v. Quinn, 27 N. J. Eq. 383 34
State v. Bowen, 38 W. Va. 91 114
State v. Bowen, 38 W. Va. 91 235

Page
State Bk. v. Chatten, 59 Kan. 303 298
State Bank v. Ellis, 30 Ala. 478 96
State Bank v. Marsh, 1 N. J. Eq. 288 249
State v. Georgia Co., 112 N. C. 34 46
State Nat. Bk. v. Monroe Cotton P. Co., 39 La. Ann. 834 106
State ex rel. Strohl v. Superior Court, 2 Am. B. R. 92 343
State v. Union Nat'l Bk, 145 Ind. 537 311
Staton v. Pittman, 11 Gratt. 99 113
Staver Wagon, etc., Co. v. Halsted, 78 Ia. 730 248
Stephens v. Cady, 14 How. 528 32
Stephens v. Cady, 14 How. 528 33
Stephens v. Fox, 83 N. Y. 313 214
Stephens v. Harris, 6 Ired. Eq. 57 292
Stephens v. Perrine, 143 N. Y. 476 232
Stephens v. Perrine, 143 N. Y. 476 321
Stephens v. Perrine, 143 N. Y. 476 324
Stern v. Anstern, 120 N. C. 107 322
Steifel v. Berlin, 51 N. Y. Supp. 147 322
Stedman v. Davis, 93 N. Y. 32 19
Stearns v. Gage, 79 N. Y. 102 126
Stein v. Levy, 29 N. Y. S. R. 87 264
Steiner Land & L. Co. v. King, 24 So. 35 103
Steiner Land & L. Co. v. King, 24 So. 35 127
Sterlen v. Neustadt, 50 Ill. App. 378 139
Steele v. Sturges, 5 Abb. Pr. 442 328
Steib v. Whitehead, 111 Ill. 247 42
Steib v. Whitehead, 111 Ill. 247 271
Steib v. Whitehead, 111 Ill. 247 273
Steib v. Whitehead, 111 Ill. 247 275
Steib v. Whitehead, 111 Ill. 247 276
Steere v. Bigelow (Hoagland), 50 Ill. 377 287
Steere v. Hoagland, 39 Ill. 264 174
Steere v. Hoagland, 39 Ill. 264 177
Steere v. Hoagland, 39 Ill. 264 187
Steere v. Hoagland, 39 Ill. 264; S. C. 50 Ill. 377 193
Steere v. Hoagland, 39 Ill. 264 202
Steere v. Hoagland, 39 Ill. 264 216
Steere v. Steere, 5 Johns. 1 277
Stevens v. Breen, 75 Wis. 595 261
Stevens v. Gladding, 17 How. 447 33
Stevens v. Gladding, 17 How. 447 41
Stevens v. Mulligan, 167 Mass. 84 51
Steward v. Stevens, Harr. Ch. 169 227
Stewart v. Dunham, 115 U. S. 61 64
Stewart v. Dunham, 115 U. S. 61 161
Stewart v. Houston & Texas Central Ry. Co., 62 Tex. 246 285
Stewart v. Isidor, 5 Abb. N. Y. Pr. N. S. 68 162

Page
Stewart v. Kearney, 6 Watts. 453 ... 110
Stewart v. Robinson, 115 N. Y. 328 ... 34
Stewart v. Stewart, 41 Wis. 624 ... 230
Stiefel v. Berlin, 45 N. Y. Supp. 746 ... 316
Stiefel v. Berlin, 28 App. Div. 103 ... 325
Still v. Spear, 45 Penn. St. 168 ... 271
Stillwell v. Van Epps, 1 Paige Ch. 615 ... 42
Stilwell v. Van Epps, 1 Paige Ch. 615 ... 236
Stilwell v. Walker, 16 N. B. R. 569 ... 361
Stirlen v. Jewett, 165 Ill. 410 ... 170
Stirlen v. Jewett, 165 Ill. 410 ... 208
Stirlen v. Jewett, 63 Ill. App. 55 ... 227
St. Louis, etc., Co. v. Sandoval, etc., Co., 116 Ill. 170 ... 55
St. Louis, etc., R. Co. v. Johnston, 133 U S 566, 577 ... 124
Stock-Growers' Bank v. Newton, 13 Colo. 245 ... 175
Stock-Growers Bank v. Newton, 13 Colo. 245 ... 261
Stoddard v. Lock, 9 N. B. R. 701 ... 361
Stokes v. Amerman, 121 N. Y. 337; S. C. 31 N. Y. S R. 391 ... 35
Stoors v. Kelsey, 2 Paige Ch. 418 ... 211
Stone v. Chisolm, 113 U. S. 302 ... 179
Stone v. Manning, 2 Scam. 530 ... 12
Stone v. Manning, 2 Scam. 530 ... 180
Stone v. Stone, 43 Ark. 160 ... 80
Storm v. Badger, 8 Paige Ch. 130 ... 145
Storm v. Davenport, 1 Sandf. Ch. 135 ... 18
Storm v. Davenport, 1 Sandf. Ch. 135 ... 112
Storm v. Waddell, 2 Sandf. Ch. 494 ... 148
Storm v. Waddell, 2 Sandf. Ch. 494 ... 235
Storm v. Waddell, 2 Sandf. Ch. 494 ... 236
Storm v. Waddell, 2 Sandf. Ch. 494 ... 238
Storm v. Waddell, 2 Sandf. Ch. 494 ... 241
Storm v. Waddell, 2 Sandf. Ch. 494 ... 328
Storms v. Ruggles, Clark's Chy. 148 ... 74
Storros v. Storros, 58 Mich. 55 ... 31
Stout v. La Follette, 64 Ind. 365 ... 199
Stow v. Russell, 36 Ill. 18 ... 149
St. Albans v. Bush, 4 Vt. 58 ... 181
Strang's Appeal, 10 W. N. C., 409 ... 7
Strange v. Longley, 3 Barb. Ch. 650 ... 84
Strange v. Longley, 3 Barb. Ch. 650 ... 204
Strong v. Township, etc., 79 Ind. 208 ... 102
Strong v. Lawrence, 58 Ia. 55 ... 195
Strannahan v. Gregory, 4 N. B. R. 142 ... 390
Straw v. Jenks, 6 Dak. 414 ... 264
Strike v. McDonald, 2 Harr. & Gill. 191 ... 161
Strohl v. Superior Court, 1 N. B. N. 309 ... 341
Stutz v. Handley, 41 Fed. Rep. 531; S. C. 139 U. S. 419 ... 217

Page
Stuart v. Isidor, 1 N. B. R. 129 366
Sturges v. Vanderbilt, 73 N. Y. 384 179
In re Stuyvesant Bank, 6 N. B. R. 272 344
Suckley v. Ratchford, 12 Gratt. (Va.) 60 80
Supplee H. Co. v. Driggs, 26 Wash. L. Rep. 658 200
Sutphen v. Fowler, 9 Paige 280 59
Sutherland et al. v. Lake Sup. S. C., R. & I. Co., 9 N. B. R. 298. 341
In re Sullivan, 1 N. B. N. 380 374
Suydam v. Beals, 4 McLean, 12 63
Suydam v. N. W. Ins. Co., 51 Pa. St. 394 172
Swayze v. Swayze, 9 N. J. Eq. 273 74
Swayze v. Swayze, 9 N. J. Eq. 273 170
Sweetser v. Silfer, 87 Wis. 102 73
Sweetser v. Silfer, 87 Wis. 102 215
Swope v. Arnold, 5 N. B. R. 148 364
Swift v. Arents, 4 Cal. 390 286
Swift v. Thompson, 9 Conn. 63 113
Swan L. & C. Co. v. Frank, 148 U. S. 603 52
Swan Land Co. v. Frank, 148 U. S. 603 66
Swan Land Co. v. Frank, 148 U. S. 603 82
Swan Lake etc., Co. v. Frank, 39 Fed. Rep. 456 55
Swan Land Co. v. Frank, 148 U. S. 603 185
Sweny v. Ferguson, 2 Blackf. 129 202
Sweeny v. Grape Sugar R. Co., 30 W. Va. 443 235
Sweeney Mfg. Co. v. Goldberg, 66 Ill. App. 568 104
Sweeney Mfg. Co. v. Goldberg, 66 Ill. App. 568 138
Swain v. Lynd, (Minn.) 76 N. W. 958 16
Swain v. Lynd, (Minn.) 76 N. W. 958 138
Swain v. Lynd, (Minn.) 76 N. W. 958 166
Swing v. Bently & Gerwig Furn. Co., (W. V.) 31 S. E. 925 310

T

Taylor v. Bowker, 111 U. S. 110 130
Taylor v. Bowker, 111 U. S. 110 179
Taylor v. Bowker, 111 U. S. 110 195
Taylor v. Cheever, 6 Gray. 146 47
Taylor v. Jones, 2 Atk. 600 72
Taylor v. Mills, 2 Edw. Ch. 318 80
Taylor v. Robinson, 7 Allen, 253 170
Taylor v. Robinson, 7 Allen 253 186
Taylor v. Robinson, 7 Allen 253 189
Taylor v. Robinson, 7 Allen 253 191
Taylor v. Salmon, 4 Myl. & Cr. 134, 619, 635 223
Taylor v. Luther, 2 Sumner 228 143
Taylor v. Webb, 54 Miss. 36 80

Page
Talcott v. Grant, etc., Co., 131 Ill. 248 239
Talcott v. The Grant Wire S. Co., 131 Ill. 248 245
Talcott v. The Grant Wire S. Co., 131 Ill. 248 244
Talcott v. The Grant Wire Spring Co., 131 Ill. 248 253
Talcott v. Hess, 31 Hun, 282 262
Talcott v. Harder, 119 N. Y. 536 261
Tolland Co. Ins. Co. v. Underwood, 50 Conn. 493 273
Tams v. Bullit, 35 Pa. St. 308 112
Tannenbaum v. Rosswog, 22 Abb. N. C. 346, 354 299
Tantum v. Green, 6 N. J. Eq. 364 5
Tantum v. Green, 21 N. J. Eq. 364 126
Tatum v. Rosenthal, 95 Cal. 129 103
Tatum v. Rosenthal, 95 Cal. 129 159
Teager v. Landsley, 69 Ia. 725 304
Tell Guano Co. v. Heatherly, 38 W. Va. 409 52
Terhune v. Kean, 155 Ill. 506 252
Terhune v. Kean, 155 Ill. 506 293
Tenney v. Ballard, W. & B. Hat Co., 17 Tex. Civil App. 144 309
Tennent v. Battey, 18 Kan. 324 187
Terry v. Anderson, 95 U. S. 628 179
Terry v. Anderson, 95 U. S. 628 195
Terry v. Anderson, 95 U. S. 628 197
Terry v. Calnan, 4 S. C. 508 98
Terry v. Hatch, 93 U. S. 44 161
Terry v. Tubman, 92 U. S. 156 194
Texas Railway Co. v. Wright, 31 L. R. A. 200 304
Thackara v. Mintzer, 100 Pa. St. 151 42
Thayer v. Tyler, 5 Allen 94 199
Thayer v. Swift, Harr. Ch. 430 227
Thatcher v. Gammon, 12 Mass. 268 215
Thielman v. Carr, 75 Ill. 385 103
Thompson v. Allen County, 115 U. S. 550 65
Thompson v. Bank, 19 Nev. 103 83
Thompson v. Brown, 4 Johns. Ch. 619 106
Thompson v. Brown, 4 Johns. Ch. 619 193
Thompson v. Brown, 4 Johns. Ch. 619 202
Thompson v. Brown, 4 Johns. Ch. 619 296
Thompson v. Daniel, 47 La. Ann. 1401 215
Thompson v. Dougherty, 12 S. & R. 448 113
Thompson v. Marsh, 61 Ill. App. 269 25
Thompson v. Marsh, 61 Ill. App. 269 35
Thompson v. Marsh, 61 Ill. App. 269 210
Thompson v. Marsh, 61 Ill. App. 269 208
Thompson v. Murphy, 10 Ind. App. 464 273
Thompson v. Nixon, 3 Edw. Ch. 457 31
Thompson v. Reno Sav. Bk., 19 Nev. 242 54
Thompson v. Railroad Co., 6 Wall. 134 174

Page
Thompson v. Thompson, 19 Me. 244 136
Thompson v. Tower Mnfg. Co., 87 Ala. 733 318
Thompson v. Yates, 61 Ill. App. 262 210
Tompkins v. Fonda, 4 Paige 448 35
In re Thomas, 3 N. B. R. 7 372
Thomas v. Adams, 30 Ill. 37 86
Thomas v. Adams, 30 Ill. 37 88
Thomas v. Adams, 30 Ill. 37 295
Thomas v. Cincinnati, N. O. T. P. Ry. Co. C. C. S. D. Ohio, D. Ky. & E. D., (Tenn.) 91 Fed. Rep. 202 336
Thomas v. Cincinnati N. O. & T. P. Ry. Co., 91 Fed. Rep. 195 .. 336
Thomas v. Goodwin, 12 Mass. 140 257
Thomson v. Lee Co., 22 Ia. 206 217
Thomas v. Merchants Bk., 9 Paige 216 42
Thomas v. The Merchants Bk., 9 Paige Ch. 216 116
Thomas v. McEwen, 11 Paige Ch. 131 149
Thomas v. McEwen, 11 Paige Ch. 131 203
Thomas v. Railroad Co., 101 U. S. 71 27
Thomas v. Sterns, 33 Ala. 137 292
Thomas v. Van Meter, 153 Ill. 65 329
Thornhill v. Bank, Fed. Cas. 13, 992 377
Thorn v. Fellows, 5 N. Y. Weekly Dig. 473 329
Thorp v. Leibrecht, 56 N. J. Eq. 499 211
Thorp v. Liebrecht, 56 N. J. Eq. 499 220
Thorndike v. Thorndike, 142 Ill. 450 304
Thornton v. Marginal Pt. R. Co., 123 Mass. 32 213
Thorn v. Woodruff, 5 Ark. 55 199
Thurber v. Blanck, 50 N. Y. 80 198
Thurber v. Blanck, 50 N. Y. 80 199
Thurber v. Blanck, 50 N. Y. 80 299
Thurmond v. Reese, 3 Kelley 449 5
Tinsley v. Anderson, 171 U. S. 101 339
Tillinghast v. Bradford, 5 R. I. 205 271
Tillinghast v. Bradford, 5 R. I. 205 273
Tilford v. Burnham, 7 Dana 109 328
Tillotson v. Wolcott, 48 N. Y. 188 328
Tilton v. Cofield, 93 U. S. 163 140
Titcomb v. Bradlee, 159 Mass. 190 278
Todd v. Nelson, 109 N. Y. 316 28
Toller v. Carteret, 2 Vern. 494 59
Tolles v. Wood, 99 N. Y. 616 270
Tolman v. Jones, 114 Ill. 147 154
Tomlinson, etc., Co. v. Sholto, 34 Fed. Rep. 380 312
Tomlinson, etc., v. Sholto, 34 Fed. Rep. 380 227
Tompkins v. Hunter, 149 N. Y. 117 255
Toof v. Martin, 6 N. B. R. 49 389
Tousley v. Barry, 16 N. Y. 497 51

Page
Tousley v. Barry, 16 N. Y. 497 125
Towsend v. Carpenter, 11 Ohio 21 41
Townsend v. Tuttle, 28 N. J. Eq. 449 93
Trask v. Green, 9 Mich. 358 5
Tradesman Pub. Co. v. Car Wheel Co., 95 Tenn. 634 179
Trappes v. Meredith, L. R. 9. Eq. 229 271
Tracy v. Tuffing, 134 U. S. 206 266
Tremaine v. Mortimer, 128 N. Y. 1 324
Trentman v. Neff, 124 Ind. 503 45
Trippe v. Lowe, 2 Kelly 304 5
Tripp v. Cook, 26 Wend. 143 229
Trier v. Herman, 115 N. Y. 163 215
Trimble v. Turner, 13 S. & M. 348 239
Trimble v. Williamson, 14 N. B. R. 53 361
Trimble v. Woodhead, 102 U. S. 647 321
Triebse v. Colburn, 64 Ill. 376 31
Truax v. Slater, 86 N. Y. 630 51
Truax v. Slater, 86 N. Y. 630 125
Trust Nat. Bk. v. Shuler, 153 N. Y. 163 85
Trusdell v. Lehman, 47 N. J. Eq. 218 164
Truesdell v. Lehman, 47 N. J. Eq. 218 166
Tuck v. Manning, 150 Mass. 211 38
Tucker v. Drake, 11 Allen. 145 14
Tucker v. McDonald, 105 Mass. 423 47
Tufts v. Tufts, 3 Utah 361 286
Tully v. Curtain, 54 Fed. Rep. 43 195
Tunesma v. Schuttler, 114 Ill. 156 7
Tunesma v. Schuttler, 114 Ill. 156 54
Trustees of School v. Wright, 12 Ill. 432 164
Tupper v. Thompson, 26 Minn. 385 71
Turley v. Taylor, 3 Lea 171 211
Turnbull v. Lumber Co., 55 Mich. 387 146
Turner v. Adams, 46 Mo. 95 5
Turner v. Adams, 46 Mo. 95 195
Turney v. Gales, 12 Ill. 152 293
Turrell v. Warren, 25 Minn. 9 217
Twin Lick Oil Co. v. Marbury, 91 U. S. 587 165
Tyler v. Hamblin, 11 Heisk 152 37
Tyler v. Peatt, 30 Mich. 63 25
Tyler v. Whitney, 12 Abb. Pr. 465 227
Tyler v. Willis, 33 Barb. 327 227

U

Uhl v. Dillon, 10 Md. 500 52
Uhl v. Dillon, 10 Md. 500 298
Uhre v. Melum, 17 Ill. App. 182 123

Page
Uhre v. Melum, 17 Ill. App. 182..... 134
Ullman v. Duncan, 78 Wis. 213..... 216
In re Ullrich, 8 N. B. R. 15..... 375
Umsted v. Buskirk, 17 Ohio St. 113..... 55
Underwood v. Sutcliffe, 77 N. Y. 58..... 183
Underwood v. Sutcliffe, 77 N. Y. 58..... 224
Underwood v. Sutcliffe, 77 N. Y. 58..... 317
Underwood v. Sutcliffe, 77 N. Y. 58..... 328
Union M. L. Ins. Co. v. Slee, 110 Ill. 35..... 128
Union Nat. Bk. v. Lane, 177 Ill. 171..... 239
Union Nat. Bk., etc. v. Warner, 12 Hun 306..... 257
Union Trust Co. v. Baker, 89 Fed. Rep. 6..... 170
Union Trust Co. v. Baker, 89 Fed. Rep. 6..... 217
In re Union Pac. R. Co., 10 N. B. R. 178..... 390
United States v. Ingate, 48 Fed. Rep. 251..... 25
U. S. v. Ingate, 48 Fed Rep. 251..... 40
U. S. v. Ingate, 48 Fed. Rep. 251..... 52
United States v. Ingate, 48 Fed. Rep. 251..... 217
United States v. Howland, 17 U. S. 108..... 85
U. S. Ins. Co. v. Central N. Bk., 7 Ill. App. 426..... 68
United States Ins. Co. v. Central Nat. Bk., 7 Ill. App. 426..... 148
United Glass Co. v. Vage, 124 N. Y. 121..... 194
United States Glass Co. v. Levett, 53 N. Y. Supp. 688..... 310
Upton v. Craig, 57 Ill. 257..... 213
Upton v. Tribilcock, 91 U. S. 45..... 7
Upton v. Tribilcock, 91 U. S. 45..... 54
Utterson v. Mair, 2 Ves. Jr. 95..... 86

V

Vail v. Knapp, 49 Barb. 299..... 59
Valentine v. Richardt, 126 N. Y. 272..... 150
Van Alstyne v. Cook, 25 N. Y. 489..... 235
Van Alstyne v. Cook, 25 N. Y. 489..... 238
Van Alstyne v. Cook, 25 N. Y. 489..... 318
Vanbuskirk v. Warren, 34 Barb. 457..... 96
Van Cleef v. Sickles, 5 Paige Ch. 505..... 84
Vanderpoel v. Vanvalkenburgh, 6 N. Y. 190..... 84
Vanderveer v. Stryker, 8 N. J. Eq. 175..... 9
Vanderveer v. Stryker, 8 N. J. Eq. 174..... 202
Vanderveer v. Stryker, 8 N. J. Eq. 175..... 216
Vanderwerker v. Glenn, 85 Va. 9..... 54
Van Doren v. Stickel, 24 N. J. Eq. 331..... 34
Vandyke v. Christ, 7 W. & S. 373..... 113
Van Keuren v. McLaughlin, 21 N. J. Eq. 163..... 112
Van Kuren v. McLaughlin, 21 N. J. Eq. 163..... 113

Page
Van Mater v. Sickler, 1 Stock. 483..... 107
In re Van Orden, 1 N. B. N. 475..... 391
Van Rensselaer v. Van Rensselaer, 113 N. Y. 207..... 150
Van Rensselaer v. Dennison, 35 N. Y. 393..... 276
Vansickle v. Shenk, 150 Ind. 413..... 25
Van Sycle v. Richardson, 13 Ill. 174..... 66
Vansyckle v. Richardson, 13 Ill. 171..... 138
Vantine v. Morse, 104 Mass. 275..... 42
Van Weel v. Winston, 115 U. S. 228..... 55
Van Weel v. Winston, 115 U. S. 228, 237..... 124
Van Weel v. Winston, 115 U. S. 228..... 170
Van Wezel v. Wyckoff, 3 Sandf. Ch. 528..... 104
Van Wezel v. Wychoff, 3 Sandf. (N. Y.) Ch. 528..... 245
Van Wezel v. Wyckoff, 3 Sandf. Ch. 528..... 294
Vance Shoe Co. v. Haught, 41 W. Va. 275..... 157
Vanse v. Woods, 46 Miss. 120..... 313
Varnum v. Hart, 119 N. Y. 101..... 394
Venable v. Rickenberg, 152 Mass. 64..... 44
Venable v. Rickenberg, 152 Mass. 64..... 45
Venable v. President, etc., Bank, etc., 27 U. S. 107..... 91
Vermont R. Co. v. Vermont R. Co., 46 Vt. 792..... 37
Vermont R. Co. v. Vermont R. Co., 46 Vt. 792..... 59
Vermont & C. R. Co. v. Vermont Cent. R. Co., 46 Vt. 792..... 303
Viers v. Detroit Paper Package Co., (Mich.) 77 N. W. 700..... 27
Victor v. Lewis, 53 N. Y. Supp. 944..... 189
Victor v. Lewis, 1 Am. B. R. 667..... 373
Victor v. Lewis, 24 Misc. N. Y. 515..... 374
Virginia & A. C. Co. v. Central R. Co., 66 Fed. Rep. 803..... 338
Virginia F. & M. Ins. Co. v. Cottrell, 85 Va. 857..... 122
Virginia Y. & C. S. & I. Co. v. Bristol Land Co., 88 Fed. Rep. 134..... 329
Voories v. Crisbie, 8 N. B. R. 152..... 357
Vosburgh v. Diefendorf, 119 N. Y. 357..... 288
Vose v. Grant, 15 Mass. 505..... 7

W

Wabash R. Co. v. Dougan, 142 Ill. 248..... 304
Wabash Western R. Co. v. Seifert, 41 Mo. App. 35..... 304
Wade v. Ringo, 62 Mo. App. 414..... 25
In re Waddell Entz. Co., 67 Conn. 324..... 333
In re Waddell Entz. 67 Conn. 324..... 344
Wadworth v. Lyon, 93 N. Y. 201..... 95
Wadsworth v. Schisselbauer, 32 Minn. 84..... 205
Waite v. Osborne, 11 Me. 185..... 199
Wakeman v. Grover, 4 Paige Ch. 23..... 81

Page
Wakeman v. Grover, 4 Paige Ch. 23 87
Wakeman v. Grover, 4 Paige 23 95
Wakeman v. Grover, 4 Paige Ch. 23 143
Wakeman v. Russell, 1 Edw. Ch. 509 204
Wales v. Lawrence, 36 N. J. Eq. 207 74
Walker v. Denison, 86 Ill. 142 164
Walker v. Ray, 111 Ill. 315 128
Walker v. Siegel, 12 N. B. R. 394 375
In re Wallace, 2 N. B. R. 52 358
In re Wallace, 2 N. B. R. 52 373
In re Wallace, Id. 17094 377
Wallace v. Hood, 89 Fed. Rep. 11 333
Wallace v. Sawyer, 54 Ind. 501 39
Wallace v. Treakle, 27 Gratt. (Va.) 479 155
Wallace v. Treakle, 27 Gratt. 479 236
Walling v. Miller, 108 N. Y. 173 394
Walsh v. Rasso, N. J. Eq. 41 Atl. 669 329
Walter v. Brooks, 125 Mass. 241 41
Walton v. Grand Belt Copper Co., 56 Hun, 211 303
Wandling v. Straw, 25 W. Va. 692 217
Wanner v. Snyder, 177 Pa. St. 208 273
Wanzer v. Howland, 10 Wis. 8 131
Ward v. Arredondo, Hopk. Ch. 213 59
Ward v. Conn. Pipe Mfg. Co., 71 Conn. 345 337
Ward v. Enders, 29 Ill. 519 213
Ward v. Griswoldville Mfg. Co., 16 Conn. 593 7
Ward v. Petrie, 157 N. Y. 301 322
Ward v. Petrie, 157 N. Y. 301 325
Ward v. Van Bokkelen, 2 Paige Ch. 289 91
Warder v. Rivers, 64 Iowa 412 147
Ware v. De Lahaye, 95 Ia. 667 190
Warfield v. Canning Co., 72 Ia. 666 249
In re Warner, 5 N. B. R. 414 369
Warner Glove Co. v. Jennings, 58 Conn. 74 261
Warner v. Hoffman, 4 Edw. Ch. 381 96
Warner v. Hopkins, 111 Pa. St. 328 109
Warner v. Jaffray, 96 N. Y. 248 301
Warner v. Jaffray, 96 N. Y. 248 303
Warner v. Littlefield, 89 Mich. 329 261
Warner v. Moran, 60 Ind. 227 5
Warner v. Paine, 3 Barb. Ch. 630 85
Warren v. Howe, 1 Chicago L. J. Weekly 177 315
Warren v. Tenth Nat'l Bk., 7 N. B. R. 481 389
In re Washington Maine Ins. Co., Fed. Cas. 17,246 377
Waters v. Dashiell, 1 Md. 455 113
Watkins v. Holman, 16 Pet. 25 37
Watkins v. Wilhoit, 104 Cal. 395 19

Page
Watts v. Gayle, 20 Ala. 817..... 87
Watts v. Gayle, 20 Ala. 817..... 93
Watts v. Waddle, 6 Peters 389, 400..... 60
Watson v. Bettman, 88 Fed. Rep. 825..... 339
Watson Coal & C. Co. v. Casteel, 68 Ind. 476..... 285
Watson v. New York Central R. R. Co., 6 Abb. N. Y. Pr. N. S. 91. 328
Watters v. McGuigan, 72 Wis. 155..... 184
Waugh v. Robbins, 33 Ill. 181..... 128
Way v. Way, 67 Wis. 662..... 299
Weakley v. Cockrill, 2 Tenn. Ch. 316..... 114
In re Weamer, 8 N. B. R. 527..... 355
Weatherly v. Capital City Water Co., 115 Ala. 136..... 311
Weaver v. Haviland, 142 N. Y. 534..... 172
Webb v. Sachs, 15 N. B. R. 168..... 382
Webb v. Stoves, 1 App. Div. 145; 37 N. Y. Supp. 414..... 46
Weber v. Weber, 90 Wis. 467..... 216
Weber v. Weber, 90 Wis. 46..... 323
Weber v. Mick, 131 Ill. 520..... 247
Webster v. Clark, 25 Me. 313..... 130
Webster v. Clark, 25 Me. 313..... 170
Webster v. Clark, 25 Me. 313..... 195
Webster v. Folson, 58 Me. 230..... 5
Webster v. Folsom, 58 Me. 230..... 23
Webster v. Folsom, 58 Me. 230..... 72
Webster v. Judah, 27 Ill. App. 294..... 250
Webster v. Upton, 91 U. S. 65..... 7
Webster v. Upton, 91 U. S. 65..... 54
Webster v. Webster, 55 Ill. 325..... 128
Weed v. Pierce, 9 Cow. 722..... 5
Week v. Bosworth, 61 Wis. 78..... 183
In re Weeks, 4 N. B. R. 116..... 363
In re Weeks, 4 N. B. R. 116..... 364
Wehle v. Koch, 46 N. Y. S. R. 24; 19 N. Y. Supp. 189..... 324
Weightman v. Hatch, 17 Ill. 281..... 9
Weightman v. Hatch, 17 Ill. 281..... 20
Weightman v. Hatch, 17 Ill. 281..... 66
Weightman v. Hatch, 17 Ill. 281..... 132
Weightman v. Hatch, 17 Ill. 281..... 175
Weightman v. Hatch, 17 Ill. 281..... 190
Weightman v. Hatch, 17 Ill. 281..... 196
Weightman v. Hatch, 17 Ill. 281..... 198
Weil v. Raymond, 142 Mass. 206..... 74
Weil v. Raymond, 142 Mass. 206..... 176
Weir v. Tannehill, 2 Yerger 57..... 180
Weis v. Tiernan, 91 Ill. 27..... 66
Weis v. Tiernan, 91 Ill. 27..... 209
Weiser v. Weiser, 53 N. Y. Supp. 578..... 28

Page
Welch v. Gurley, 2 Hayw. 334, 510 199
Welch v. Wallace, 3 Gilm. 490 193
Weld v. Sage, (N. Y.) 54 N. Y. Supp. 253; 34 App. Div. 471 339
Welsh v. Welsh, 105 Mass. 27 110
Wells v. Ely, 11 N. J. Eq. 172 272
Wells v. Ely, 11 N. J. Eq. 172 280
Wells v. Robb, 43 Kan. 201 55
Wells v. Schuster-Hax Nat. Bank, 23 Colo. 534 212
Wemyss v. White, 159 Mass. 484 273
Wendell v. Shaw, 1 Barb. N. Y. 462 145
Werborn v. Kahn, 93 Ala. 201 236
Wessel v. Brown, 10 Lea 685 33
Westbrook v. Munger, 62 Miss. 316 279
West Coast Grocery Co. v. Stenson, 13 Wash. 255 124
West v. Fraser, 5 Sandf. 653 238
Wetmore v. Wetmore, 149 N. Y. 520, 529 270
In re Wheeler et al., 18 N. B. R. 385; 26 Pittsb. Leg. J. 84 Fed. Cas. 17,490 342
Wheeler v. Heermans, 3 Sandf. Ch. 597 209
Whipple v. Fairchild, 139 Mass. 262 51
White v. Cotzhausen, 29 U. S. 329 378
White v. Davis, 48 N. J. Eq. 22 19
White v. Drew, 9 W. Va. 695 156
White v. Ewing, 159 U. S. 36 64
Whitehead v. Hellen, 74 N. C. 679 227
White v. Keady, 69 Ill. App. 405 22
White v. Kuntz, 107 N. Y. 518 257
White v. Russell, 79 Ill. 155 67
White v. Russell, 79 Ill. 155 68
White v. Russell, 79 Ill. 155 94
White v. Russell, 79 Ill. 155 202
White v. Russell, 79 Ill. 155 213
White v. White, 30 Vt. 338 273
White's Bk. v. Farthing, 101 N. Y. 344 102
White's Bank, etc., v. Farthing, 101 N. Y. 344 240
Whitesel v. Hiney, 62 Ind. 168 126
In re Whitehead, 2 N. B. R. 599 385
Whiting v. Beebe, 12 Ark. 421 133
Whitney v. Davis, 148 N. Y. 256 299
Whitney v. Robbins, 17 N. J. Eq. 360 61
Whitney v. Robbins, 17 N. J. Eq. 360 312
Wickersham v. Comerford, 96 Cal. 433 181
Wickham v. Morehouse, 16 Fed. Rep. 324 129
Wiggin v. Heywood, 118 Mass. 514 33
Wiggin v. Heywood, 118 Mass. 514 170
Wiggins v. Armstrong, 2 Johns. Ch. 144 52
Wiggins v. Armstrong, 2 Johns. Ch. R. 144 170

Page
Wiggins v. Armstrong, 2 Johns, 144 172
Wiggins v. Armstrong, 2 Johns. Ch. 144 173
Wiggins v. Armstrong, 2 Johns. Ch. 144 180
Wiggins v. Armstrong, 2 Johns. Ch. 144 181
Wiggins v. Armstrong, 2 Johns. Ch. 144 182
Wiggins v. Armstrong, 2 Johns. Ch. 144 188
Wiggins v. Armstrong, 2 Johns. Ch. 144 198
Wiggins v. Armstrong, 2 Johns. Ch. 144 216
Wiggins v. Armstrong, 2 Johns. Ch. 144 299
Wilson v. Binkman, 2 N. B. R. 149 386
Wilson v. Binkman, 2 N. B. R. 149 389
Wilson v. Bynum, 92 N. C. 717 30
Wilson v. Childs, 8 N. B. R. 527 365
Wilson v. City Bank of St. Paul, 5 N. B. R. 270 389
Wilson v. Hooser, 72 Wis. 420 105
Wilson v. Joseph, 107 Ind. 490 304
Wilson v. Martin, Wilson Automatic Fire Alarm Co., 151 Mass. 515 32
Wilson v. Martin Wilson, etc., 151 Mass. 575 33
Wilson v. Roche, 58 N. Y. 642 288
Wilson v. Robertson, 21 N. Y. 587 262
Wilson v. Sax, 54 Pac. 46 184
Williams v. Bizzell, 11 Ark. 716 113
Williams v. Bizzell, 11 Ark. 716 170
Williams v. Brown, 4 Johns. Ch. 682 172
Williams v. Brown, 4 Johns. Ch. 682 188
Williams v. Gibbes, 58 U. S. 239-255 101
Williams v. Hageboom, 8 Paige 469 148
Williams v. Hageboom, 8 Paige Ch. 469 208
Williams v. Hageboom, 8 Paige Ch. 469 227
Williams v. Hubbard, 1 Mich. 446 84
Williams v. Hubbard, 1 Mich. 446 85
Williams v. Hubbard, 1 Mich. 446 177
Williams v. Hubbard, 1 Mich. 446 214
Williams v. Hubbard, Walk. Ch. 28 227
Williams v. Ingersoll, 89 N. Y. 508 206
Williams v. Ives, 49 Ill. 512 208
Williams v. Michenor, 11 N. J. Eq. 520 21
Williams v. Michenor, 11 N. J. Eq. 520 87
Williams v. Michenor, 11 N. J. Eq. 520 94
Williams v. Michenor, 11 N. J. Eq. 520 97
Williams v. Michenor, 11 N. J. Eq. 520 101
Williams v. Michenor, 11 N. J. Eq. 520 170
Williams v. Michenor, 11 N. J. Eq. 520 198
Williams v. Michenor, 11 N. J. Eq. 520 199
Williams v. Sexton, 19 Wis. 42 27
Williams v. Sexton, 19 Wis. 42 130

Page
Williams v. Sexton, 19 Wis. 42 171
Williams v. Spragins, 102 Ala. 424 124
Williams v. Stoutz, 92 Ala. 516 114
Williams v. Thorn, 70 N. Y. 270 270
Williams v. Thorn, 70 N. Y. 270 273
Williams v. Thorn, 70 N. Y. 270 279
Williams v. Wilkes, 14 Pa. St. 228 217
Williamson v. Brown, 15 N. Y. 354 125
Williamson, etc., Washington, etc., R. Co., 33 Gratt 624 224
Wiltshire v. Meerfleet, 1 Edw. Ch. 654 177
Wilkes v. Ferris, 5 Johns. 335 279
Wilkinson v. Yale, 6 McLean, 16 63
Willard v. Ford, 16 Neb. 543 285
Willard v. Masterson, 160 Ill. 443 15
Willis v. Yates, 12 S. W. 232 263
Willis v. Moore, Clark's Ch. 150 203
Willard v. Briggs, 161 Mass. 58 218
Willetts v. Vandenburgh, 34 Barb. 424 96
Willis v. Henderson, 4 Scam. 13 90
Willis v. Henderson, 4 Scam. 13 91
Wilber v. Collier, Clark's Ch. 315 131
Wilber v. Collier, 3 Barb. Ch. 427 296
Wilber v. Stockholders, 39 Leg. Int. 346 7
Wilbur v. Stockholders, 18 N. B. R. 178 391
Re Wilcox & H. Co., 70 Conn. 220 331
Wilcox v. Hawley, 31 N. Y. 648 392
Wild v. O'Brien, sheriff, 4 Alb. L. J. 364 375
Wilbur v. Fradenburgh, 52 Barb. 474 126
Wilder v. Bailey, 3 Mass. 289 199
Winslow v. Pitkin, 1 Barb. Ch. 402 150
Winslow v. Pitkin, 1 Barb. Ch. 402 210
Winslow v. Minnesota R. Co., 4 Minn. 313 93
Winslow v. Douseman, 18 Wis. 456 104
Winslow v. Winslow, 7 Mass. 96 111
Winslow v. Leland, 128 Ill. 304 177
Winslow v. Leland, 128 Ill. 304, 338 190
Winslow v. Leland, 128 Ill. 304 196
Winslow v. Leland, 128 Ill. 304 216
Winslow v. Leland, 128 Ill. 304 292
Winslow v. Leland, 128 Ill. 304, 340 293
Winchester v. Crandall, Clark's Ch. 371 89
Wincock v. Turpin, 96 Ill. 135 7
Winters v. Claitor, 18 N. B. R. 533 366
In re Winnie, 4 N. B. R. 5 353
In re Winn, 1 N. B. R. 131 359
Winchell v. Allen, 1 Conn. 385 199
Winans v. Graves, 43 N. J. Eq. 263 81

Page
Wiswall v. Sampson, 55 U. S. 52, 67 101
Wise v. L. & C. Wise Co., N. Y. 12 App. Div. 319 335
Wis. Granite Co. v. Gerrity, 144 Ill. 77 66
Wis. Granite Co. v. Gerrity, 144 Ill. 77 170
Wis. Granite Co. v. Gerrity, 144 Ill. 77 171
Wis. Granite Co. v. Gerrity, 144 Ill. 77 196
Witmer's Appeal, 45 Pa. St. 455 299
Witherbee v. Witherbee, 17 App. Div. 181; 45 N. Y. Supp. 297.. 322
Witt v. Hereth, 13 N. B. R. 106 365
Wolf v. Gray, 53 Ark. 75 267
In re Wood, 1 N. B. N. 430 387
Wood v. Amory, 105 N. Y. 278 124
Wood v. Carpenter, 101 U. S. 135, 141 125
Wood v. Carpenter, 101 U. S. 135 165
Wood v. Dummer, 3 Mason 308 7
Wood v. Franks, 67 Cal. 32 261
Wood v. Robinson, 22 N. Y. 564 183
Wood v. Robinson, 22 N. Y. 564 253
Wood v. Robinson, 22 N. Y. 564 280
In re Woodard, 1 N. B. N. 385 393
Woodard & Stone Co. v. Milnes, 101 Wis. 329 308
Woodburn v. Woodburn, 23 Ill. App. 289 103
Woodbury v. Nevada Southern R. Co., 120 Cal. 463 75
In re Woodruff, 1 N. B. N. 423 393
Woodruff v. Ritter, 26 N. J. Eq. 86 21
Woods v. Morrell, 1 Johns. Ch. 103 143
Woodward v. Brooks, 128 Ill. 222 250
Woodward v. Hall, 75 Wis. 406 230
Woodward v. Solomon, 7 Ga. 246 20
In re Worland, 1 Am. B. R. 450 361
In re Wright & Co., 1 N. B. N. 428 358
In re Wright, 1 N. B. N. 381 369
Wright v. Nostrand, 94 N. Y. 31 227
Wright v. Nostrand, 94 N. Y. 31 225
Wright v. Nostrand, 94 N. Y. 31 318
Wright v. Nostrand, 98 N. Y. 669 324
Wright v. Stanard, 2 Brock. 311 159
Wright v. McCormack, 17 Ohio St. 86 55
In re Wyne, 4 N. B. R. 5 368
Wyman v. Kimberly Clark Co., 93 Wis. 554 232

Y

Yates Co. Bk. v. Carpenter, 119 N. Y. 550 43
Yeager v. Wallace, 44 Pa. St. 294 43
Yeager v. Wallace, 44 Pa. St. 294 326
Yealman v. Sav. Inst. 96 U. S. 764 384

Page
Yeomans v. Brown, 8 Metc. 57 111
Young v. Clapp, 147 Ill. 176 108
Young v. Clapp, 40 Ill. App. 312 244
Young v. Frier, 9 N. J. Eq. 465 52
Young v. Frier, 9 N. J. Eq. 465 170
Young v. Hughes, 32 N. J. Eq. 372 286
Youngs v. Morrison, 10 Paige Ch. 325 131
Youngs v. Morrison, 10 Paige Ch. 325 203
Youngs v. Morrison, 10 Paige Ch. 325 205
Young v. Morgan, 89 Ill. 199 112
Young v. Stearns, 3 Ill. App. 498 134
Young v. Young, 2 Hill (S. C. L.) 425 199
In re Young, 3 N. B. R. 111 392
In re Youkon Woollen Co., 1 N. B. N. 420 360

Z

Zella Guano Co. v. Heatherly, 38 W. Va. 409 170
Zweig v. Horicon Iron & Mfg. Co., 17 Wis. 362 139
Zweig v. Horicon Iron & Mfg. Co., 17 Wis. 362 205
Zimmerman v. Franke, 34 Kan. 650 304

THE
EQUITABLE REMEDIES OF CREDITORS.

CHAPTER I.

GENERAL SCOPE OF EQUITABLE REMEDIES.

§ 1. Introductory.
2. Creditors' bills defined.
3. Equitable jurisdiction—Grounds of.
4. General classification and nature of creditors' bills.
5. Fraudulent conveyances—Statute 13 Eliz.
6. Fraudulent conveyances—Classes of property embraced.
7. Fraudulent conveyances—Legal and equitable modes of reaching.
8. Fraudulent conveyances—
   (1) By the debtor to hinder, etc.
   (2) By taking title in another.
   (3) By voluntary conveyance to wife, etc.
   (4) By fraudulent mortgage.
   (5) By fraudulent judgment.
   (6) By fraudulent assignment.
9. Fraudulent conveyances—Form immaterial.
10. Fraudulent conveyances—*Jus disponendi*—Public policy.
11. Fraudulent conveyances—Attitude of courts of equity.
12. Fraudulent conveyances—Voluntary conveyances.
13. Exhaustion of legal remedies—Meaning of.
14. Judgment—When not required.
15. Corporations—Fraudulent acts of.
16. Creditors' bill—When sustained.
   (a) To cancel fraudulent deed.
   (b) Effect of assignment by debtor.
   (c) To reach property fraudulently conveyed and other property.
   (d) Where credit obtained by apparent ownership.

(e) Where property sold by grantee to innocent purchaser.
(f) Where grantee has exchanged for other property.
(g) Vendee not personally liable when.
(h) Reversal of decree does not operate as estoppel.
(i) Creditor's election to proceed against any property.
(j) Where administrator refuses to disaffirm—Exception in case of depositor in a bank.
(k) Where a firm secretes its property.
(l) Where debtor's property is put in improvements, etc.
(m) Where corporate property is distributed to stockholders.
(n) Where land has been sold under decree for alimony.
(o) To reach salary of an officer—Garnishment.
(p) To reach shares of stock taken for property.
(q) To make effectual a remedy given by statute.
(r) To reach interest of inventor or author.
(s) To reach debtor's equitable interest in personal property.
(t) To reach a surplus arising from a foreclosure sale.
(u) To reach money of husband used by wife in purchase of land.
(v) To reach money to become due the debtor on contract.
(w) To reach separate estate of married women.
(x) To reach interest of partner after partnership debts paid.
(y) To reach money due debtor on life insurance policy.
(z) To reach money due on judgment for personal injury.
(aa) To reach proceeds of property fraudulently sold.
(bb) To reach proceeds due on note fraudulently transferred.
(cc) To reach principal and income of legatee's interest.
(dd) To reach right of widow to dower.
(ee) To reach debtor's equitable interest in land purchased.
(ff) To reach deceased debtor's property fraudulently sold.
(gg) To reach individual interest of debtor in judgment for death of son.
(hh) To reach money paid as usury.
(ii) To reach a note pledged as collateral.
(jj) To reach a vested remainder of the debtor.

(kk) To reach money of debtor deposited in name of wife.

§ 17. Creditors' bill—When not sustained.

(a) To reach property purchased by executrix with estate money.

(b) By a creditor who has taken a deed of trust, etc.

(c) By a mortgagee who has not offered to surrender security.

(d) To reach indebtedness due debtor from non-resident.

(e) To reach land out of state—Exception.

(f) Where funds deposited for benefit of all creditors.

(g) Where there is no subsisting lien.

(h) Where administrator dies and probate court has jurisdiction.

(i) Power in administrator to sell is not power to cancel deed.

(j) Power in administrator to cancel depends on existence of creditors.

(k) Against a city to reach money due contractor.

(l) Against surety—United States court.

(m) Where the sole ground is to obtain a better price.

(n) Where contract to purchase has been rescinded.

(o) Where property purchased by husband in good faith, etc.

(p) Where fraud or insolvency not established.

(q) Where grantee is free from fraud, and in possession.

(r) To reach patent.

(s) To reach money due debtor as assignee.

(t) Where assignee of *chose in action* cannot sue.

(u) To recover rents due and to become due.

(v) To reach debtor's distributive share of estate.

(w) To reach balance due on deficiency judgment.

(x) Where debtor in custody of officer under ca. sa.

(y) To reach trust property rendered inalienable.

(z) To reach property of foreign corporation in receiver's hands.

(aa) To reach promissory note of resident to non-resident.

(bb) To reach debts due debtor in foreign jurisdiction.

(cc) To reach contingent rights in expectancy.

(dd) To reach property not the debtor's when bill filed.

(ee) To reach property in hands of debtor (See Statute).

(ff) To reach exempt property.

(gg) To reach debt due after insolvency proceedings begun.
(hh) Where bill is filed to hinder and delay creditors.
(ii) Where personal property sufficient and remedy certain.
(jj) Where pledged property has been sold and proceeds applied.
(kk) Where the only ground of jurisdiction is better price.
(ll) To reach the good will of a business transferred in fraud of creditors.
(mm) To reach money on a verdict for personal injury before judgment.
(nn) Where a deed is void for uncertainty.
(oo) Judgment against executor to set aside conveyance of testator.
(pp) Where collection of a debt prohibited at law it cannot be in equity.
(qq) Where suit is against trustees for trustee indebtedness.

§ 18. May reach real or personal property.
19. When pendency of suit not a bar to a subsequent suit.
20. Amount due on judgment immaterial.
21. Holder of security not barred.
22. Property applied according to equitable methods.
23. Money paid by debtor on rescinded contract recoverable.
24. Right of recovery depends on debtor's right.
25. Equitable assets—Power of court over.
26. Evidence, sufficiency of—Declarations of vendor.
27. Injunction not granted to general creditor.
28. Good faith required.
29. Creditors' remedies against insolvent corporations.
(a) Equitable remedy well established.
(b) Statutory remedy.
(c) Proceeding against corporation and stockholders.
(d) Parties to.
(e) Accounting and assessment.
(f) Extent of liability.
(g) Right of action passes to receiver.
(h) Right of priority in.
(i) Jurisdiction on dissolution.
(j) Where property of, in hands of trustee.
(k) Must be judgment creditors.

Section 1. Introductory.—The Equitable Remedies of Creditors, usually denominated Creditors' Bills,

are traceable to early days of equitable jurisprudence, as administered in the courts of England and subsequently adopted in this country during the Colonial period, and afterwards, as part of our English legal inheritance. The history of this branch of remedial jurisprudence, if it shall ever be written, would be a fitting illustration of the growth of the general subject of equitable jurisprudence as administered in courts of Chancery, and courts exercising chancery jurisdiction in this country and in England. It is an element in the civilization of the age, and particularly where the common law prevails, that no person is left without an adequate remedy in our courts, unless, indeed, by his own acts, he has placed himself in a position where equity will refuse to interfere in his behalf. The very basis of the branch of remedial jurisprudence now under consideration is in the fact that an adequate and complete remedy is afforded to creditors where the common law would not do so.

§ **2. Creditors' Bills Defined.**—Creditors' Bills may be defined to be bills filed by creditors who seek to satisfy their debts out of some equitable estate of the defendant (debtor) which is not liable to levy and sale under an execution at law, or out of some property which has been put beyond the reach of ordinary legal process.[1]

[1] Bispham's Principles of Equity, Sec. 526, citing the following cases: Newman v. Willetts, 52 Ill. 101; Farnsworth v. Strasler, 12 Ill. 482; Hagan v. Walker, 14 How. 29; Trask v. Green, 9 Mich. 358; Botsford v. Beers, 11 Conn. 369; Weed v. Pierce, 9 Cow. 722; Spader v. Davis, 5 Johns. Ch. 280, 20 Johns. 554; Bayard v. Hoffman, 4 Johns. Ch. 450; Webster v. Folson, 58 Me. 230; Warner v. Moran, 60 Ind. 227; Dodge v. Griswold, 8 N. H. 425; Barry v. Abbott, 100 Mass. 396; Lillard v. McGee, 4 Bibb. 165; Trippe v. Lowe, 2 Kelly 304; Thurmond v. Reese, 3 Kelly 449; Eliott v. Merchants' Exch., 14 Mo. App. 234; Dodd v. Levy, 10 Mo. App. 121; Dargan v. Waring, 11 Ala. 988; Dunphy v. Kleinsmith, 11 Wall. 610; Belcher v. Arnold, 14 R. I. 613; Tantum v. Green, 6 C. E. Green 364; Hall v. Joiner, 1 S. C. 186 (N. S.); Turner v. Adams, 46 Mo.

They are bills in equity filed by creditors for the purpose of collecting their debts out of the real or personal property of the debtor under circumstances in which the process of execution at common law could not afford relief.[2]

Another class of bills coming under this head is where a bill is filed by one or more creditors of a deceased person for an account of the assets and a settlement of the estate of the decedent.[3]

The extension of equitable relief to creditors of insolvent corporations has enlarged the scope of creditors' bills, or bills in the nature of creditors' bills, which has been done both by statute and as independent equitable proceedings. The basis of proceedings of this nature rests in two considerations, (1) the primary and inherent power of courts of equity to grant adequate and complete relief to creditors of insolvent corporations, and (2) the nature and character of corporate assets, and particularly the fact that the capital stock of a corporation constitutes a trust fund for the payment of its

95. The definition of Pomeroy (Pomeroy's Eq. Jur. Vol. I., Sec. 171) is too restricted in that the remedy is confined to cases where there is a lien or charge on the property sought to be reached.

[2] Am. & Eng. Enc. of Law, Vol. 4, p. 573. Bills of this description had their origin in the limited scope of the ordinary writs of execution. These writs being common law writs were confined in their operation to legal interests. Equitable interests could be reached, if reached at all, in equity alone. The narrowness of the common law remedy naturally led to a jurisdiction in equity to afford the necessary relief. Bisph. Eq. Sec. 526.

[3] Anderson's Dictionary, p. 293; Bispham's Pr. of Eq., Sec. 525. Usually courts organized for the purpose of administering upon the estates of deceased persons, are invested with power sufficient to protect the interests of creditors, but the equitable jurisdiction is not as a rule divested thereby. See Board of Public Works v. Columbian College, 84 U. S. 521. Upon the general subject of the rights of a creditor to file a bill of this nature see Hogan v. Walker, 14 How. 29; Fowler's Appeal, 6 Norris, 449; Freeland v. Dazey, 25 Ill. 294. It seems that bills of this nature are based upon original equitable jurisdiction, and not upon auxiliary jurisdiction to aid legal process. Hence it is not necessary that the creditor should be in a position to levy an execution, if the fraudulent obstacle should be removed. Hogan v. Walker, supra.

debts. By this proceeding the creditors are enabled to reach the unpaid subscriptions to the capital stock, enjoin the fraudulent disposition of the corporate property, and secure an equal distribution of the corporate funds.[4]

§ **3. Equitable Jurisdiction, Grounds of.**—There are two principal primary grounds upon which the aid of a court of equity is invoked in behalf of a creditor in obtaining satisfaction of his debt. In one case equitable jurisdiction is invoked upon the ground of the intervention of some fraud of the debtor which forms an impediment to plaintiff's recovery, and the fraud complained of, as a rule, constitutes a basis for an independent equitable suit or proceeding. In proceedings of this nature the jurisdiction does not depend upon an exhaustion of legal remedies and is not, therefore, ancillary in its nature; but, on the other hand, is referable rather to the primary principles of equitable jurisdiction, the basis of which being fraud. Courts of equity have not, however, as a rule, concerned themselves as to the particular form of action sought to be maintained, or the particular basis of the action, but rather to the adequate and effectual relief to be afforded to

[4] Lane's Appeal, 105 Pa. St. 49; Penn Bk. v. Hopkins, 111 Pa. St. 328; Wood v. Dummer, 3 Mason 308; Sagory v. Dubois, 3 Sandf. Ch. 466; Ward v. Griswoldville Mfg. Co., 16 Conn. 593; Ogilvie v. Knox Ins. Co., 22 How. 380; Mann v. Pentz, 3 Comst. 415; Adler v. The Milwaukee, Etc., Co., 13 Wis. 63; Myers v. Seeley, 10 Nat. Bk. Reg. 411; Upton v. Tribilcock, 91 U. S. 45; Sanger v. Upton, 91 U. S. 56; Webster v. Upton, 91 U. S. 65; Wilber v. Stockholders, 39 Leg. Int. 346; Scoville v. Thayer, 105 U. S. 143; Patterson v. Lynde, 106 U. S. 519; Sawyer v. Hoag, 84 U. S. 610; Tunesma v. Schuttler, 114 Ill. 156; Wincock v. Turpin, 96 Ill. 135; Eames v. Doris, 102 Ill. 350. That unpaid subscriptions constitute a trust fund for the payment of corporate debts see Lane's Appeal, supra; Sawyer v. Hoag, 84 U. S. 610; Sanger v. Upton, 91 U. S. 56; Webster v. Upton, 91 U. S. 65; Hatch v. Dana, 101 U. S. 205; Wood v. Dummer, 3 Mason 308; Vose v. Grant, 15 Mass. 505; Spear v. Grant, 16 Mass. 9; Strang's Appeal, 10 W. N. C. 409; Messersmith v. Bank, 15 Norr. 440; Brown v. Fisk, 23 Fed. Rep. 228; Rounds v. McCormick, 114 Ill. 252.

the party appearing to be entitled thereto. The other primary ground of relief in proceedings of this nature is referable more directly to the inadequacy of the common law remedies, and therefore depends more directly, as a jurisdictional fact, upon the preliminary exhaustion of such legal remedies, and the proper application of the equitable principles of right and justice as between the parties. Moreover, in proceedings based upon the latter ground, the court is frequently called upon to adjust the rights and equities of the parties growing out of acts and transactions that are deemed fraudulent in law in contradistinction to those which are *ipso facto* fraudulent by intent of the parties. That class of equitable proceedings based upon a preliminary exhaustion of legal remedies may depend upon one of two conditions: (1) the property or effects of the debtor, which in equity ought to be applied to the plaintiff's indebtedness, may have been concealed, covered up or placed beyond the reach of legal process; or (2), it may be of such inherent character by nature as not to be subject to levy and sale.

It is not designed in this volume to exhaustively treat of the various grounds upon which the equitable proceedings usually designated Creditors' Bills are based, but the subjects of fraudulent conveyances, fraudulent judgments, fraudulent mortgages, and similar topics, will be discussed in general terms, in order that the scope of this remedial proceeding may be fairly understood, leaving for future discussion and elaboration the various acts and transactions of the debtor which form the basis of the creditor's complaint and afford a ground for his invoking the aid of a court of equity.

§ 4. **General Classification and Nature of Creditor's Suits.**—There are three proceedings in chancery usually termed Creditor's Suits, or Creditor's Proceed-

ings. The first of these is the ordinary proceeding in equity designed to set aside and cancel some alleged fraudulent transfer, alienation or incumbrance of the debtor's property, intended by him to hinder, delay and defraud his creditors in the collection of their debts.[5]

Where the fraudulent transfer relates to real estate, the fraud as to creditors may consist in the conveyance of the property to another person with a fraudulent intent to place the title beyond the reach of existing or future creditors. It may also consist in the purchase of real property by the debtor and procuring the title to be placed in the name of another for the debtor's use and benefit, or it may likewise consist in the encumbrance of the property by mortgage or judgment with a fraudulent intent to thereby cover up and conceal the property and thus prevent the appropriation thereof by creditors to the payment of debts by common law proceedings. Where the fraud relates to personal property, it may consist in a colorable transfer, gift, incumbrance, or other disposition thereof, in which case the common law remedies are usually resorted to and may be found generally to be adequate and complete.

The right of action in a creditor to institute proceedings in a court of Chancery for relief where the title to real estate has been placed in the name of another for his use is inherent in a court of equity and does not depend on statutory power or authority.[6]

[5] Newman v. Willetts, 52 Ill. 98; Weightman v. Hatch, 17 Ill. 281; Miller v. Davidson, 8 Ill. 518; Lynch v. Johnson, 48 N. Y. 27; Brown v. Nichols, 42 N. Y. 26.

[6] When a judgment creditor has obtained a lien by levy of execution he has an equitable action independent of statute, Rozek v. Redzinski, 87 Wis. 525. Independent of statute the right of a court of Chancery to grant relief where the title to real estate of a debtor has been placed in the name of another for his use cannot be questioned. Vanderveer v. Stryker, 8 N. J. Eq. 175. This same right also extends to personal tangible property held by another for the creditor's use. Vanderveer v. Stryker, 8 N. J. Eq. 175.

The second class partakes more of the nature of a bill of discovery, and is sometimes termed an Omnibus bill, the scope of which is not confined to any specific property, but extends to any property or class of property liable for the debts of the debtor, which he may have concealed or covered up in such manner as not to be accessible to the ordinary common law remedies, and which in equity ought to be devoted to the payment of debts. While this proceeding is not, strictly speaking, a bill of discovery, as known in the earlier chancery proceedings, yet it partakes of the nature of that proceeding in that it seeks a discovery from the defendant of the existence and whereabouts of property and effects, the knowledge of which rests alone in the mind and conscience of the debtor. It differs, however, from that proceeding in that it does not merely lend its aid to common law courts, but furnishes a remedy enforceable through the decretal orders of a court of chancery. In effect, it is an independent chancery proceeding, though based, as a rule, upon a common law judgment, and its efficiency as a remedial proceeding lies in the inadequacy of the common law action.[7]

The third class is the statutory proceeding authorized in many States, designed to afford a remedy to the creditors usually more simplified and summary, but designed to accomplish the same end as the ordinary creditor's bill. Sometimes it is designated as a Supplementary Proceeding, or Proceeding in Aid, and may

[7] Creditors' bills are not pure bills of discovery, and are not dependent alone on discovery, though discovery may be had. To such bills, though discovery is required, the answer under oath, though not waived, is not conclusive. Schroetter v. Brown, 59 Ill. App. 24; Newman v. Willetts, 52 Ill. 98. Under Ch. 303 Laws of 1860, of Wisconsin, a preferred creditor after execution returned unsatisfied, has an action in the nature of a creditor's bill against a judgment debtor to compel a discovery of property, etc., due the debtor or held in trust for him, to enjoin the transfer thereof, and obtain satisfaction out of the same. Pierce v. The Milwaukee Cons. Co., 38 Wis. 253.

be, though not always, a supplemental proceeding in the original action in which the judgment is rendered.[8]

There are still other proceedings not ordinarily in legal parlance designated as creditor's suits, but by reason of their equitable nature and the inadequate and insufficient remedies at law are properly classified with the creditor's suits mentioned in the preceding section. In this class of suits the relation of debtor and creditor exists, and the basis of jurisdiction is not in the fact of the intervention of some fraud in fact or in law, but it is the impotency of the common law writs to reach the intangible assets and effects of the debtor, by reason of their not being the subject matter of a levy and sale. Frequently the effects of a debtor may consist wholly of what are sometimes termed equitable assets, and which ought in justice and equity to be applied in the satisfaction of his debts, in which case the turpitude of the debtor consists not in overt acts of fraud, but in a refusal on his part to devote that which has a monetary value to the payment of his honest debts. The debtor in this state of affairs does not openly violate the law, but he stands in defiance of the law, and courts of equity, by compulsory process, reach beyond the limits of common law process and compel the doing of that which ought to have been done.[9]

[8] Smith v. Weeks, 60 Wis. 94; Barker v. Dayton, 28 Wis. 367; Lynch v. Johnson, 48 N. Y. 27; Bartlett v. McNeil, 60 N. Y. 53; S. C. 49 How. Pr. 55. It has been observed elsewhere that in many of the states the Statute has modified the ordinary creditor's bill or proceedings in the nature of a creditor's bill and provided a modified proceeding in equity, in lieu thereof, which is more or less summary in its nature, but designed to accomplish the same purpose, though the practice under the creditor's bill proper still remains in full force. In Massachusetts an equitable proceeding designed to reach the equitable assets of the debtor has been incorporated into the General Statutes, which do away with the prerequisite of a judgment and execution returned thereon unsatisfied as required under the old chancery practice.

[9] At law a judgment and execution constitute no lien on mere equitable rights which are not susceptible of delivery or possession. They operate on legal rights only. The same principle

Another proceeding of similar nature is where the creditor, having an established claim against an insolvent estate, is permitted to institute a proceeding for the discovery of assets, or proceed against heirs or devisees to subject real estate inherited or devised by the debtor.[10]

Similar in object and purpose is the proceeding in equity by creditors against the officers of an insolvent corporation to reach the property of the corporation which has been misappropriated by them in fraud of the rights of creditors, and also where the corporation has become insolvent from any cause and there is a contractual or statutory liability on the part of its stockholders for the payment of corporate debts and the directors or officers, through negligence or wilfulness, refuse to prosecute.

§ **5. Fraudulent Conveyances. Stat. 13 Eliz.**—It has been sometimes supposed that the statutes of 13 Eliz. Ch. 5, and 29 Eliz. Ch. 5, and the substantial reënactment thereof in this country, constitute the begin-

is established in reference to mere equitable interests in personal property; they are not subject to levy and sale. Disborough v. Outcalt, 1 N. J. Eq. 298. There are two classes of cases in which a court of chancery affords a creditor relief after he has proceeded to judgment and execution and failed to obtain satisfaction of his debt: (1) In one case the creditor obtains a lien on property but is compelled to go to a court of equity to remove obstructions fraudulently or unequitably interposed to prevent a sale on execution. (2) In the other the creditor goes into a court of chancery to obtain satisfaction of his debt from property not subject to execution. In the one case he proceeds to make his execution when the obstruction is removed, and in the other case his right depends on his having exhausted his legal remedies. Stone v. Manning, 2 Scam. 530; Beck v. Burdett, 1 Paige Chy. 305. In order to entitle the plaintiff to recover he must show that the debtor has made some fraudulent disposition of his property or that the case stands infected with some trust, collusion or injustice against which it is the province of a court of equity to grant relief. The court will not, therefore, aid a judgment creditor after execution returned nulla bona to reach a debt due the debtor. Donovan v. Finn, Hopk. Ch. 59; Loud v. Sergeant, 1 Edw. Ch. 164.

[10] Kennedy v. Creswell, 101 U. S. 641; Hogan v. Walker, 55 U. S. 29; Houston v. Levy, 44 N. J. Eq. 6; Coddington v. Bispham, 36 N. J. Eq. 574; Mallory v. Craige, 15 N. J. Eq. 73.

ning of the statutory law against fraudulent conveyances in England and this country. This supposition, however, is not true, for during the reigns of Henry VII. and Edw. III. and Rich. II. statutes of similar purport had been enacted and were in force in England, and the Elizabethan statute was but the embodiment in concise and, finally, in permanent form, of previous legislation on the subject. Neither is it true as has also been supposed that these statutory enactments antedate the common law on this subject, for they are nothing more than declaratory of the common law as it had previously existed, with a penalty attached. The purpose of the statute was to prevent transfers of property covinous in their nature and intended to place the same beyond the reach of creditors and reserve the beneficial enjoyment for the use of the grantor. By it all transfers of property, whether real or personal, when made with the intention of defrauding creditors, were void as to such creditors. Transfers of this character would have been set aside at the instance of creditors in a proper proceeding instituted for that purpose, independent of any statute, by the common law as it then existed.

§ 6. **Classes of Property Embraced.**—We shall now consider the classes of property, interests and rights which may be the subject matter of fraudulent transfer by the debtor and which may be reached in equity by appropriate suits instituted by creditors and appropriated for their benefit. But before doing so, it should be borne in mind that it is not every transfer, whatever may have been the purpose of the grantor, that is the subject of successful attack by creditors. Thus, if the property conveyed or assigned is such that it is by law exempt from levy and sale, and is by law placed beyond the reach of creditors, it is not in an equitable proceeding instituted by them subject to equitable process. Where it is the expressed policy

of the law-making power that certain specific property shall be exempt, or that property of a certain amount in value, or a homestead, shall not be subject to legal process and forced sale, it would be inconsistent and illogical that such property could be taken from the debtor, or his alienation thereof be the subject of successful attack in equity. It would be an anomaly in jurisprudence if creditors could be defrauded, hindered or delayed, by the conveyance of property which neither at law nor in equity is subject to legal process, and which in no event could have formed an element in the contractual relationship of the parties.[11]

It is also to be observed that the conveyance must, in its effects, be injurious to the complaining creditor. Thus, if the remaining interest of the debtor in the property is so insignificant as to be of no practical value, or if the property alleged to have been fraudulently conveyed is so heavily encumbered that the equity remaining is valueless, a court of equity will not lend its aid in avoiding the transfer.[12]

§ 7. **Procedure Legal or Equitable.**—Where property of the debtor has been conveyed by the debtor for the purpose of hindering, delaying or defrauding his creditors, there are two modes of subjecting the prop-

[11] Prout v. Vaughn, 52 Vt. 451; Cipperly v. Rhodes, 53 Ill. 346; Tucker v. Drake, 11 Allen 145; Moore v. Flynn, 135 Ill. 74; Muller v. Inderreiden, 79 Ill. 382. The conveyance of the homestead of a debtor cannot be fraudulent as to creditors. Shawano Co. Bk. v. Koeppen, 78 Wis. 533; Rozek v. Redzinski, 87 Wis. 525; Bond v. Seymour, 2 Pin. 105; Dreutzer v. Bell, 11 Wis. 119; Pike v. Miles, 23 Wis. 164; Hibben v. Sozer, 33 Wis. 319; Bank of Commerce v. Fowler, 93 Wis. 241. After an abandonment of a homestead for six years it will be considered that a lien of a judgment will attach though the debtor insisted it was his intention to return. Blackburn v. Lake Shore Co., 90 Wis. 362.

[12] Aultman & T. Co. v. Pikop, 56 Minn. 531; Blake v. Boisjoli, 51 Minn. 296. The machinery of courts of equity is employed in ascertaining and enforcing the substantial rights of parties and not those of a mere nominal nature.

erty to the satisfaction of the debts of creditors: (1) The creditor, where the title was in the debtor, may, after a fraudulent transfer, levy his execution thereon, sell the same thereunder, and when his title is perfected by a deed at the end of the statutory period of redemption, bring ejectment and therein test the fraudulent character of the transfer; or (2), he may bring an equitable action after judgment and based thereon to remove the fraudulent conveyance or transfer out of the way of his execution; or (3), he may levy upon and sell the fraudulently conveyed property, and, after obtaining a deed, file a bill to quiet his title, having recovered possession.[13]

The first of these proceedings is not generally resorted to, for the reason that, by the levy and sale, the judgment is satisfied, and an unsuccessful result of the ejectment suit is an end of the proceeding. Besides, while the question of fraud is cognizable in a court of law, yet there the latitude is not so adequate and comprehensive.

§ **8. Fraudulent Conveyance by Debtor.**—There are several kinds of transactions usually denominated fraudulent conveyances, against which a court of equity will afford relief on the application of a creditor who has exhausted his legal remedy: (1) Where the debtor, after the creation of his indebtedness, conveys his prop-

[13] Smith v. Reid, 134 N. Y. 568; Maders v. Whallon, 74 Hun, 372; Kain v. Larkin, 131 N. Y. 300. Where a fraudulent conveyance has been made, the creditor may levy his execution upon the property that has been so conveyed, sell the same, treating the conveyance as a nullity and subsequently file a bill to perfect his title. Willard v. Masterson, 160 Ill. 443. A judgment creditor has a legal right to enforce the collection of his judgment against the lands of his debtor and he may sell lands that have been fraudulently conveyed under his execution and the purchaser at such sale may impeach the sale in a suit at law to recover possession or, on gaining possession, defend the title thus acquired against the fraudulent grantee or those claiming under him. Smith v. Reid, 134 N. Y. 568; Chautauqua Co. Bank v. Risley, 19 N. Y. 369; Bergen v. Carman, 79 N. Y. 146.

erty to another for the purpose of hindering, delaying and defrauding his creditors, the purpose in such case being to put his property and effects beyond their reach, and at the same time reserve to himself the beneficial interest therein.

(2) Where the debtor has never had the title in his own name, but has purchased property and had the same conveyed to and the title taken in the name of another for his use and benefit, with a like fraudulent purpose and intent.

(3) Where the debtor, being insolvent, makes a voluntary conveyance to his wife, children, or some relative, and does not retain sufficient property to pay his debts. In such case the intention of the debtor may be free from any fraudulent design, and his motives may be commendable as between the parties to the transaction. The law of *jus disponendi* is limited by public policy and the just rights of creditors.[14]

(4) Where the debtor, with fraudulent intent and purpose, mortgages his property by a colorable instrument and thereby seeks to hinder, delay and defraud his creditors. The fraudulent encumbrance of property with a view of placing it beyond reach of creditors is just as obnoxious as an absolute conveyance or transfer.[15]

[14] A judgment creditor is entitled to have a conveyance of real estate made by the judgment debtor to his wife without consideration set aside, although it was not made with the intent to defraud. Quinnipiac Brew. Co. v. Fitzgibbons, 71 Conn. 80. The earnings of a married woman earned before the debt was contracted are not liable for the debts of her husband. J. M. Houston Grocer Co. v. McGinnis, (Ky.) 45 S. W. 514.

[15] Merchants N. Bk. v. Hogle, 25 Ill. App. 543. A judgment creditor who has perfected his lien may impeach a chattel mortgage upon grounds rendering it void ab initio as to creditors, although the mortgagee had taken possession of and disposed of the property before the judgment was recovered. Hedges v. Polhemus, 9 Misc. 680, 62 N. Y. S. R. 267. A judgment creditor may maintain an action to set aside a mortgage foreclosure where the same was illegal. Swain v. Lynd, (Minn.) 76 N. W. 958. Where a lien on lands which is apparently valid and superior to that under

(5) When the debtor, by fraud and collusion, procures a judgment to be obtained against him and suffers his property to be sold thereunder, and becomes divested thereby of his title, with the intent to hinder, delay and defraud his creditors. This is but using the courts, and their machinery, for the accomplishment, indirectly, of what could not be done directly.[16]

which complainant claims is fraudulent and void as against creditors, complainant's bill to set aside the lien should be filed in aid of execution before sale. He cannot sell the property under the execution, and afterwards proceed to set the incumbrance aside as a fraud upon his rights. Marshall v. Blass, 82 Mich. 518. A creditor who has not levied on property cannot attack the validity of mortgages which are void as to creditors for want of filing after an assignment for the benefit of creditors. Kitchen v. Lowery, 37 N. Y. S. R. 327.

[16] It is not within the scope of this work to treat of the jurisdiction of courts of equity in matters relating to judgments of common law courts except in so far as they may be void or voidable on the ground of fraud. For the purpose, however, of reference in matters relating to equitable jurisdiction, and the power to enjoin the enforcement of judgments on grounds other than frauds an invaluable and complete collection of authorities will be found in volumes 30, 31, and 32, L. R. A. as follows: (1) Injunctions against execution sales or other proceedings under final process, Vol. 30, p. 98. (2) Injunctions entered on confession Vol. 30, p. 235. (3) Injunctions in garnishment proceedings, Vol. 30, p. 360. (4) Injunctions for matters arising subsequent to the rendition of judgment, Vol. 30, p. 560. (5) Injunctions for errors and irregularities in proceedings before judgment, Vol. 30, p. 700. (6) Injunctions against judgments obtained by fraud, mistake, etc., Vol. 30, p. 786. (7) Negligence as a bar to injunction, Vol. 31, p. 33. (8) Injunctions with reference to sureties, Vol. 31, p. 59. (9) Injunctions against void judgments, Vol. 31, p. 200. (10) Injunctions against judgments for defenses existing prior to rendition, Vol. 31, p. 747. (11) General equitable jurisdiction regarding judgments, Vol. 31, p. 481. A court of equity can take jurisdiction in regard to a judgment only in cases of fraud, accident or mistake, and the fraud must be more than mere falsity of proof or claim. There must be artifice or collusion by which the court has been deceived. Furbush v. Collingwood, 13 R. I. 720. An adjudication that judgments are fraudulent as to plaintiffs is not an adjudication that they are void as to other judgments. Lopez v. Merchants & F. N. Bk., 18 App. Div. 427, 46 N. Y. Supp. 91. An attaching creditor may attack the validity of judgments against the property on which he has levied, alleging they are fraudulent as to him. id. A judgment against a debtor will not be set aside on the application of a creditor because the debtor failed to plead the statute of limitations to a portion of the claim. Allen v. Smith. 129 U. S. 465. If intended to obstruct the plaintiff it is void. Robert v. Hodges, 16 N. J. Eq. 299, and the power of the court

(6) Where the debtor, under the form of an assignment for the benefit of creditors, with fraudulent intent and purpose, withholds property which should go to his creditors, or schedules claims which are fraudulent or fictitious, the assignment will be void as to creditors.[17]

in such case is unquestioned. Pease v. Guenther, 61 Ill. App. 345. Where a judgment by confession is obtained which is not in effect to delay creditors or is a matter of public record with notice to all it will not be set aside. Bank of Georgia v. Higginbottom, 34 U. S. 48. A court of equity may not vacate a judgment which has been obtained by fraud in the matter of process, but will interfere to prevent the use of it as an instrument of injustice by the author of the wrong. Bornesly v. Powell, 1 Ves. Sr. 120; McMillan v. Reynolds, 11 Cal. 373; Galatian v. Erwin, Hopk. Ch. 48; Dobson v. Pierce, 12 N. Y. 156; The Bridgeport Bank v. Eldredge, 28 Conn. 556; Murray v. Drake, 46 Cal. 644. Judgments fraudulent as to creditors should only be set aside to the extent of satisfying plaintiff's demands. Metcalf v. Moses, 55 N. Y. Supp. 179. A bill will be maintained to cancel judgment which has been satisfied. Shaw v. Dwight, 27 N. Y. 244; Pettit v. Shepherd, 5 Paige Ch. 493; Kimberly v. Sells, 3 Johns. Ch. 467. A judgment confessed on a debt not due and fully secured by mortgage but made for the purpose of putting the judgment debtor's property beyond the reach of creditors is voidable as to them. Burns v. Morse, 6 Paige Ch. 108.

[17] An assignment of one partner to another to secure a partnership debt intended to keep the property under the control of the firm is void. Sewall v. Russell, 2 Paige Ch. 175. And so is an assignment in payment of a debt of property worth much more than the amount due and in view of an anticipated judgment is void. Butler v. Stoddard, 7 Paige Ch. 163; Lee v. Hunter, 1 Paige Ch. 519. Equity will not assume jurisdiction to compel an assignee to account where the orphan's court has power to compel him to do so. Hoagland v. Lee, 40 N. J. Eq. 469. And equity has no power except through the assignee in bankruptcy to reach property fraudulently transferred before bankruptcy. Glenny v. Langdon, 98 U. S. 20. Future profits to be realized on a contract may be assigned if fairly made and not against public policy. Ingram v. Osborn, 70 Wis. 184; Field v. Mayor, 6 N. Y. 179; Mulhall v. Quinn, 1 Gray 105. A creditor who seeks to set aside an assignment and fails does not thereby forfeit his rights under the assignment. Peters v. Bain, supra. A payment by an insolvent within a few hours of making a general assignment for the benefit of creditors is not void under Ohio Rev. Stat. 1886, Sec. 6343. Matthews v. Lloyd, 89 Ky. 625; Cf. Bayard v. Hoffman, 4 Johns. Ch. 450. The sale of property and distribution of proceeds before an assignment may be attacked by a creditor's bill. Such property does not pass to the assignee. Colburn v. Shay, 17 Ill. App. 289. Cf. Brownell v. Curtis, 10 Paige Ch. 210; but see Hamlen v. Bennett, 52 N. J. Eq. 70. A judgment confessed the day before an assignment where no assignment was then intended is not part of the assignment. Hanford v. Prouty, 133 Ill. 339; Cf. Storm v. Davenport, 1 Sandf. Ch. 135. Fictitious debts scheduled is evidence of fraud. Mead

§ 9. **Form of Fraud Immaterial.**—It is generally of no significance what form of conveyance or transfer the fraudulent debtor may adopt, or how many persons may be implicated in the scheme of fraud, or into how many forms of property the original may have been converted. The tortuousness of the transaction forms no impediment to the searching and discriminating analysis of this branch of remedial jurisprudence. No fortress erected by a fraudulent debtor as a protection against creditors is invulnerable to the decree of a court of equity, however deep the foundations may be laid or of what materials made.

It is of no efficacy that the debtor has his property conveyed to a third party, for in such case if the conveyance is fraudulent it may be reached and applied to the payment of his debts. He is not permitted to do

v. Phillips, 1 Sandf. Ch. 83. A creditor who accepts the benefit of a general assignment may attack a transfer of the assignor made in violation of the statute of frauds, though it may not be in violation of the assignment law. Dittman v. Weiss (Tex. Civ. App.) (Tex.) 31 S. W. 67. A creditor may maintain suit to reach fraudulently conveyed property where the assignee has neglected for years to do so. Hamlen v. Bennett, 52 N. J. Eq. 70. Where a trust is established and a fund secured on the application of a part of the creditors, the plaintiffs obtain no priority. Martin v. Rainwater, 56 Fed. Rep. 7; Fisher v. Herron, 22 Neb. 183; Clark v. Shelton, 16 Ark. 474. There is no presumption that a creditor residing in a foreign state knows the law or public acts or records of the state where his debtor's assignment is made and executed. Stedman v. Davis, 93 N. Y. 32; Bank etc. v. Dodge, 8 Barb. 233; Merchants Bk. v. Spalding, 9 N. Y. 53. An assignment intended to hinder, delay and defraud creditors is voidable as to them. Artman v. Giles, 155 Pa. St. 409; Koechl v. Leibinger & Oehm Co., 26 App. Div. 573, 50 N. Y. Supp. 568. In such case, it is the duty of the assignee to defend. Chittenden v. Brewster, 69 U. S. 191. And so also an assignment void under the statute. Watkins v. Wilhoit, 104 Col. 395. After a fraudulent discontinuance of an assignment, a non-assenting creditor may, by creditor's bill, assert his right to assets fraudulently transferred. American Exchg. Nat. Bk. v. Walker, 164 Ill. 135. An assignment which is void in part, and the void part capable of separation, may be sustained as to the remainder. Peters v. Bain, 133 U. S. 670. When a bill is filed to set aside an assignment for the benefit of creditors and it appears that the upholding of the assignment will be more beneficial to the creditors, the bill will not be maintained. White v. Davis, 48 N. J. Eq. 22.

indirectly that which he may not do directly. The form in which the fraud is perpetrated is of no significance in equity, and the grantee participating in the fraudulent scheme is *particeps criminis* in the illegal act.[18]

The instrumentality by which a transfer is accomplished is immaterial so long as the fraudulent intent and purpose exist. The fraudulent transfer may be made by means of a valid judgment lawfully enforced.[19]

§ **10. Jus Disponendi—Public Policy.**—While it is not the policy of the law to hamper the transfer of property, or restrain, or in any manner interfere with the free and unlimited exercise of the rights of every one to deal with his own as he pleases and in his own way, due regard being had to public rights and interests, yet the law will not permit transfers to be made in violation of the rights of creditors. A man must be just to his creditors before he is generous to those who are nearer to him by ties of relationship. Hence it is that the law will not permit a debtor who is insolvent to purchase property and pay for the same, and have the title conveyed to his infant son, leaving creditors unpaid, and if he does so, such property may be reached and applied to the satisfaction of debts due his creditors.[20]

§ **11. Attitude of Courts of Equity.**—It is the province of a court of equity to remove all impediments that are fraudulently placed in the way of a creditor in the collection of his just debts. A court of equity

[18] The judgment creditors of an insolvent debtor may have a decree in a court of equity to apply property belonging to the debtor, but held by a third party under a fraudulent conveyance, to the payment of their judgments. Woodward v. Solomon, 7 Ga. 246. May reach property in the hands of a third person that would not be liable to execution. Candler v. Pettit, 1 Paige, Ch. 168.

[19] The fact that a transfer of the debtor's property with intent to defraud his creditors is accomplished through the agency of a valid judgment lawfully enforced does not alter its fraudulent character. Decker v. Decker, 108 N. Y. 128; Carpenter v. Osborn, 102 N. Y. 552.

[20] Newman v. Willetts, 52 Ill. 98; Mugge v. Ewing, 54 Ill. 236; Montz v. Hoffman, 35 Ill. 553; Weightman v. Hatch, 17 Ill. 281.

is sometimes called a court of conscience, and will not look upon fraud, in whatsoever guise it may appear, with any degree of toleration. It will closely scan the acts of the parties and scrutinize their conduct with a view of determining the relief, if any, the plaintiff is entitled to. It should be observed, however, that courts of equity are not to be regarded as courts for the collection of debts, that being merely an incident to the jurisdiction exercised.[21]

§ **12. Voluntary Conveyances—Remedy in Case of.** — The general rule in regard to voluntary conveyances, such as are without adequate consideration, is that they are void as to existing creditors, who are injured thereby, if the proper steps are taken, within a reasonable time, to have them so declared, by a court of competent jurisdiction.[22]

While the law closely scrutinizes in behalf of creditors conveyances by parents to their children, yet, in the absence of solicitation, imposition or wrongful action on their part, such conveyances have been sustained by the court and a cancellation refused.[23]

[21] Farnsworth v. Strasler, 12 Ill. 482. Chancery has jurisdiction, on a bill filed by a judgment creditor for relief against a conveyance of lands by his debtor, made with intent to defeat the judgment lien, or to hinder or delay satisfaction of the judgment, whether execution has been issued thereon or not. McCalmont v. Lawrence, 1 Blatchf. 232; Hagan v. Walker, 14 How. 29. When a party made a written contract for the purchase of land, on which he made valuable improvements, and, subsequently, to defeat his creditors, he conveyed the land to another, who was to hold the same in trust for him, it was held that the aid of the court of equity was properly invoked by the creditors to remove the difficulties thrown around it by the debtor. Williams v. Michenor, 11 N. J. Eq. 520. The voluntary assignment of a mortgage to the mortgagee's wife, by substituting her name as mortgagee after the instrument has become operative by delivery, and without consideration, will not prevent the subjection of the mortgage to the equitable remedies of a judgment creditor of the husband, in order to apply it in satisfaction of the judgment. Keam v. Conkwright, 78 Mich. 58.

[22] Woodruff v. Ritter, 26 N. J. Eq. 86; Budd v. Atkinson, 50 N. J. Eq. 530; Hoboken Bk. v. Beckman, 33 N. J. Eq. 53; Hecht v. Koegel, 25 N. J. Eq. 135.

[23] Where it appears that a con-

A voluntary conveyance made long before the plaintiff's indebtedness was created will not be set aside in the absence of proof that it was made with the intent to defraud existing or subsequent creditors. Of course, in such case, if the conveyance is made, for instance, by a husband to his wife, important elements to be considered are as to the reasonableness of the provision under all the surrounding circumstances, the good faith of the parties, and whether made in anticipation of future indebtedness or reverses.[24]

A creditor of a deceased person could maintain a suit against his wife, under N. Y. laws, 1858, Ch. 314, § 2, where the property was conveyed to her by her husband at a time when he was mentally incapacitated to transact business, but not under § 1 of this act, as amended by laws of 1894, Ch. 740.[25]

The equities of a creditor are not superior to those of the debtor's wife, where she, before marriage, gave to him money, which was used in improving real estate conveyed to her by him after marriage, the property being used as a dwelling, and this though the husband did not keep the identical money separate from his own.[26]

And where a husband settled upon a wife property, the title to which was conveyed to her, she assuming an incumbrance thereon, the proceeds of the property will

veyance alleged to be fraudulent was made by a mother to her daughters without solicitation, imposition or wrongful action on the part of the grantees, it will not be canceled. Simon v. Simon, 163 Pa. St. 292.

[24] Where a judgment creditor's bill is filed to set aside voluntary conveyances made by a man to his wife long before he became indebted to complainant, the latter must show that they were made with intent to defraud either existing or subsequent creditors. Brown v. Vandermeulen, 44 Mich. 522. In this case it appeared that a man, while insolvent, made provision for his wife that was not extravagant in view of existing circumstances, and did so in good faith and not in anticipation of reverses.

[25] Nill v. Phelps, 46 N. Y. Supp. 662.

[26] White v. Keady, 69 Ill. App. 405.

only be subjected to the payment of the husband's debts to the extent of the money paid by him.[27]

Where debts are contracted on the strength of the debtor's ownership of property, and the property is subsequently conveyed to the debtor's wife by a voluntary transfer, it may be reached by a creditor's bill.[28]

The only adequate remedy, where property has been purchased by the debtor and conveyed to his wife, is a bill in equity. An execution and levy in such a case is not an appropriate remedy.[29]

Where the debtor purchases property and has the same conveyed to his wife, a suit may be maintained against the debtor's heirs at law if, at the debtor's death, he leaves no other property available to meet his obligations. This principle is based upon the fact that the purchase and payment in the mode specified creates a trust in favor of creditors existing at the time.[30]

Where property has been fraudulently conveyed, the subsequent death of the fraudulent purchaser who procured the property to be conveyed to another, is not a bar to recovery by the defrauded creditor.[31]

[27] Property voluntarily settled by a husband upon his wife, she assuming payment of an incumbrance thereon at the time she purchased it, for the purpose of delaying, hindering and defrauding his creditors, cannot be subjected to a charge for a greater amount than that alleged to have been paid for her benefit by the husband. Reel v. Livingston 34 Fla. 377. A creditors' bill cannot be maintained under Ga. Code Sec. 3149 et seq., against one who had previously ceased to be a trader because of a prior bona fide sale of all his merchandise to his wife for a bona fide debt equal to the value of such merchandise. Simms v. Tidwell, 98 Ga. 686.

[28] Hoagland v. Wilson, 15 Neb. 320. Section 38 of 2 N. Y. Rev. Stat. 174 is intended to reach property belonging to the debtor, or things in action due him, and does not apply to a case where property is paid for by the debtor and the conveyance is made to another. Niver v. Crane, 98 N. Y. 40.

[29] Where the creditor of a husband desires to hold land conveyed to the wife, and paid for out of the property of the husband, he must do it by a bill in equity, and not by a levy. The levy provided by Me. Rev. Stat. Ch. 76, Sec. 13, can only be made where some part of the legal estate is in the debtor. Webster v. Folsom, 58 Me. 230.

[30] Chillingworth v. Freeman, 67 Barb. (N. Y.) 379.

[31] An action may be main-

§ 13. **When Legal Remedy Exhausted.** — The right to recover does not depend upon an absolute exhaustion of all legal remedies against the debtor in another jurisdiction than that in which the judgment forming the basis of the suit is rendered. It is immaterial that the debtor may have property in another state. It would be an unreasonable requirement if the creditor could be compelled to go into foreign jurisdictions for the purpose of enforcing his claim as a preliminary step to his equitable proceeding. He has satisfied all legal and reasonable requirements when he has exhausted his legal remedies in the jurisdiction where judgment is rendered and to which process may run.[32]

Where a creditor's secretary committed a felony in hypothecating bonds to a bank, and a judgment is obtained against the bank for a conversion, it is not necessary, as a condition of maintaining a bill, that the creditor shall institute a prosecution on the criminal side of the court.[33]

The fact that a garnishment proceeding might be sustained will not oust a court of equity of jurisdiction where it appears that there are several parties claiming an interest in the property, or a portion thereof, in severalty, as in such a proceeding the rights and equi-

tained (Sec. 3835 Rev. Stat. Wis.) to subject to the payment of the debts of a deceased person lands purchased by him and conveyed to another. Allen v. McRae, 91 Wis. 226. The action in such case may be by a creditor who has proved his claim in behalf of all such creditors. id.

[32] A creditor is not required to enforce his claims against property of the judgment debtor in another state before proceeding against fraudulent grantees of the debtor to subject to the judgment land situated in the county where the judgment was obtained. O'Brien v. Stambach, 101 Ia. 40. Under Ky. Civ. Code, Sec. 439, the plaintiff may institute an equitable action for discovery, after a return of "No property," notwithstanding the interest of the debtor in certain property was in fact liable to execution. Clements v. Waters, 90 Ky. 96.

[33] Merchants' & Planters' Bank v. Masonic Hall Trustees, 65 Ga. 603.

ties of all parties can be adjusted and settled, and thus a multiplicity of suits be avoided.[34]

Nor is the creditor required to exhaust his remedy by proceedings supplemental to execution before filing his bill in equity.[35]

The general rule is, however, as seen elsewhere, that as a preliminary prerequisite to the filing of a creditor's bill all legal remedies existing in favor of the creditor against the debtor must have been exhausted.[36]

The defense that legal remedies have not been exhausted must be made in opportune time. It is too late, in an ancillary suit, to make such defense, where the original suit is nearly ended.[37]

Where the debtor has waived the rights of a trial by jury, no judgment having been rendered, an intervening mortgagee against whom, and by whom nothing is claimed, cannot object.[38]

[34] Mablock v. Babb, 31 Or. 516. And see Purstoff v. Jorges, 86 Wis. 128; Gullickson v. Madsen, 87 Wis. 19; Van Sickle v. Shenk, 150 Ind. 413.

[35] The fact that the debtor may have an equity of redemption in land encumbered for more than it is worth is not a defense. Wade v. Ringo, 62 Mo. App. 414.

[36] Bryan v. May, 9 App. cases (D. C.), 383; Henderson v. Brooks, 3 Thomp & C., 445; Partee v. Kartrecht, 54 Miss. 66; Case Mfg. Co. v. Perkins, 2 Det. L. N. 457; United States v. Ingate, 48 Fed. Rep. 251; Tyler v. Peatt, 30 Mich. 63; Meier v. Waco St. Bk., 27 S. W. 881; Early Times Dist. Co. v. Zeiger (N. M.), 49 Pac. 723; John V. Farwell & Co. v. Norton, 77 Ill. App. 685; Burne v. Kunzman (N. J.), 19 Atlantic 667. Recourse cannot be had to a creditor's bill when the remedy at law is adequate, but when the executor has committed a devastavit, or is insolvent and irresponsible, there is sufficient ground for the interference of a court of equity. 1868, Ragsdale v. Holmes, 1 S. C. 91. Equitable proceedings under Iowa Code 1873, Secs. 3150-3154, for subjecting land to the payment of a judgment, will not lie until the remedy at law has been exhausted. Peterson v. Gittings, 77 N. W. (Ia.) 1056. Personal demand for the satisfaction of a judgment need not be made upon the debtor as a foundation for a creditor's bill, under the Illinois statute. Thompson v. Marsh, 61 Ill. App. 269. The Mo. Rev. Stat. 1889, Sec. 571, providing for an attachment creditor's proceeding to set aside a fraudulent conveyance, waives the exhaustion of legal remedies. Mansur & T. I. Co. v. Jones, 143 Mo. 253. A judgment against two of a firm of three is not sufficient. Produce Bank, etc., v. Morton, 40 N. Y. Supr. Ch. 328.

[37] Ross-Mehan Brake Shoe Foundry Co. v. Southern Malleable Iron Co., 72 Fed. Rep. 957.

[38] Grand Trunk R. Co. v. Ver-

§ **14. Judgment When not Required.**—The rule of law requiring the exhaustion of legal remedies by the recovery of a judgment, the issuance of an execution thereon and the return thereof *nulla bona*, is not without its exceptions, as where the debtor dies insolvent and claims are probated against his estate, as required by law. In such case the claims thus probated will constitute a sufficient foundation for a suit in equity to subject fraudulently conveyed property to their payment, for the reason that no judgment at law can be rendered. The legal procedure having advanced as far as possible, equitable procedure steps in and accomplishes that which otherwise would have been impossible. The basis of action is the inadequacy of common law remedies rather than exhaustion. Under this state of case, in the absence of statute, as elsewhere observed, there is no semblance of a lien which can be made the basis of the equitable procedure.[39]

§ **15. Corporations — Fraudulent Acts of.**—The same rules that are applicable to individuals are equally applicable to a corporation which transfers its property to another, in violation of the rights of its creditors, where the transferee has notice of the fraudulent purpose. Of course, for obvious reasons, in the case of the fraudulent acts of a corporation, the modes of proof are not, in all cases, identical with those applicable to individuals. The transfer of all the assets of one corporation to another, whereby an attempt is made to defraud creditors, or which would operate as a fraud, will not be valid as to creditors, and the transferee or grantee takes *cum onere*.[40]

mont R. Co. (C. C. D. Vt.) 85 Fed. Rep. 87.

[39] Hamilton v. Mississippi College, 52 Miss. 65.

[40] Blair v. St. Louis, Hannibal, etc., R. R. Co., 22 Fed. Rep. 36. Where the purchaser from a fraudulent grantee knew of the claim of plaintiff against the grantor, the purchaser takes the property subordinate to the rights of plaintiff. Thomas v.

§ **16. When Sustained.**—(a) A creditor's bill is the proper proceeding to have a conveyance executed by the debtor in fraud of his creditors prior to judgment set aside and the property subjected to the payment of debts.[41]

And in such case it is no defense that the debt was not contracted until after the conveyance was executed, if it is shown that the credit was obtained on the strength of the apparent ownership of the property.[42]

(b) It is not a valid defense to an action brought by a creditor to reach property fraudulently conveyed that the debtor has made a voluntary assignment for the benefit of creditors. It is the duty of the assignee to defend in such case if he has a defense.[43]

(c) A bill in equity may be sustained for the double purpose of reaching property that has been fraudulently conveyed by the debtor and to reach other property that is not subject to execution.[44]

(d) A conveyance will be held invalid where the

Railroad Co., 101 U. S. 71; Hibernia Ins. Co. v. St. Louis, etc., 13 Fed. Rep. 516; Harrison v. Union Pacific, etc., R. Co., 13 Fed. Rep. 522; Cass v. Manchester Co., 9 Fed. Rep. 640; Brum v. Merchants' Co., 16 Fed. Rep. 140; Abbott v. American Co., 33 Barb. 578. An action in the nature of a creditor's bill to subject property of the defendant corporation to the payment of a debt, on the ground that bonds in payment of property transferred to the corporation were issued in a sum greatly exceeding its value, when the cause of action upon which his judgment was obtained had not accrued at the time, will not be sustained. Sligh v. Shelton S. W. R. Co. 54 Pac. 763. A creditor's proceeding may be maintained to reach personal property levied by an insolvent corporation under a void contract. Viers v. Detroit Paper-Package Co. (Mich.), 77 N. W. 700.

[41] A creditor's bill is a proper proceeding to have a deed executed by the debtor before judgment set aside and declared void on the ground that it is fraudulent as to him. Gates v. Boomer, 17 Wis. 470; Beck v. Burdett, 1 Paige, 305; Clarkson v. DePeyster, 3 Paige, 320; Williams v. Sexton, 19 Wis. 51; Brown v. Edmonds, 9 S. D. 273. If a conveyance was to defraud future creditors, a bill may be maintained by a creditor whose debt matured thereafter. Petree v. Brotherton, 133 Ind. 692.

[42] Shand v. Hanley, 71 N. Y. 319; Savage v. Murphy, 34 N. Y. 508; Case v. Phelps, 39 N. Y. 164.

[43] Fort Stanwix Bk. v. Leggett, 51 N. Y. 552.

[44] A bill may be filed to set

grantor is engaged in a hazardous business requiring credits and he remains in possession and apparent ownership, and by that means and on account thereof obtains credit. Such a transaction would be inequitable and unjust, and would be impeachable at the instance of a creditor injured thereby.[45]

(e) The remedy of a creditor is not defeated where the fraudulent grantee has sold the property to an innocent purchaser, for in such case the proceeds of the sale are as available as the property itself. The fraudulent grantee becomes chargeable with the proceeds derived from the innocent purchaser, but the property itself is not.[46]

(f) It is not essential that the precise property fraudulently conveyed shall remain in the hands of the fraudulent grantee to entitle the plaintiff to a recovery. Thus, the grantee may have exchanged the fraudulently conveyed property for other property still held by him, in which case the fraud will be impressed upon the latter property in lieu of the former.[47]

(g) Where it is sought to make the vendee liable on the ground of a fraudulent sale, based on the vendor's continued possession, no decree will be rendered making the vendee personally liable, he never having possession or control of the property.[48]

aside a fraudulent conveyance and at the same time to reach other property not subject to execution. Randolph v. Daly, 16 N. J. Eq. 313. Where the judgment debtor has property which is fraudulently incumbered or has been fraudulently assigned, and has other property which can only be reached by a bill in equity, the bill may be filed for the double purpose of removing the fraudulent obstruction and reaching both species of property. Cuyler v. Moreland, 6 Paige, Ch. 273.

[45] Todd v. Nelson, 109 N. Y. 316.

[46] Braem v. Merchants' Nat. Bank, 127 N. Y. 508. A fraudulent grantee cannot become the assignee of a mortgage and enforce it against the purchaser under a decree in a creditor's suit. Weiser v. Weiser, 53 N. Y. Supp. 578.

[47] Carver v. Barker, 73 Hun, 416.

[48] Nicholson v. Leavitt, 4 Sandf. (N. Y.) 252. In a creditor's bill to reach property purchased by the debtor who had

(h) Where creditors seek to follow property fraudulently conveyed and procure a decree against the property, which is subsequently reversed, they are not precluded from taking a different course and procuring a different decree based on the evidence on final hearing, such as a personal decree against the fraudulent grantee.[49]

(i) The creditor has an election to proceed against any property of the debtor which has been fraudulently conveyed. It is not within the power of fraudulent grantees to force such creditor to proceed against any particular piece of property, to the exclusion of other pieces. The option is wholly with the creditor in such case as to what property he will proceed against. As to grantees equally culpable, equity knows no favorite, but the creditor is not compelled to proceed against all.[50]

(j) Where the administrator of a deceased fraudulent grantor has statutory power to disaffirm a transaction on the ground of its being a fraud upon creditors, and he refuses to do so upon the demand of a creditor and the estate in the hands of the administrator is insufficient, the creditor may bring suit in behalf of himself and other creditors to reach property fraudulently conveyed. Of course, the general rule is that an estate,

the conveyance made to his daughter in contemplation of insolvency, and with the intent to defraud creditors, where it appeared that the grantee was free from fraud or where it also appeared that the daughter was the assignee of a judgment against her father, which judgment was prior to that of plaintiff's, it was held that the plaintiff was not entitled to recover against the daughter, though she had instituted no suit upon her judgment; that she, having the title and possession, was not required to bring an action in order to preserve her claim as a creditor. Brown v. Chubb, 135 N. Y. 174.

[49] Dilworth v. Curts, 139 Ill. 508.

[50] When the debtor has no property of his own, the plaintiff can levy on any property sold by him, which may be subject to the lien of his judgment. Barden v. Grady, 37 Ga. 660. A judgment creditor is not obliged to follow all the fraudulent conveyances made by several execution defendants, but may allow some to stand while he seeks to set aside others. First National

or its management, will not be taken from the hands of those lawfully entrusted with it, but this rule has its exception where the legally authorized parties are in collusion with those holding property alleged to have been fraudulently transferred.[51]

It seems that in such case that a judgment in favor of the creditor is not an essential prerequisite, for the reason that in bringing the action to reach fraudulently conveyed property of the decedent, the creditor acts as a trustee for the administrator. He does, in fact, that which the administrator should do.[52]

The same rule does not apply, however, where the suit is instituted against a bank by a depositor. If the suit is instituted in the United States court by a stockholder, the 94 equity rule would require a demand on the corporation to bring suit and a refusal, but a depositor does not occupy such relationship to the corporation as to require the enforcement of the rule.[53]

(k) When an insolvent firm, in preparation for and in anticipation of a failure, secretes its property and uses its funds for improving the property of an employe, with whom a conspiracy is entered into to defraud creditors, equitable relief will be granted in behalf of the firm creditors. The same rule applies where the firm property has been transferred to a member of the firm at a time when the firm is insolvent.[54]

Bk. of Marshall v. Hosmer, 48 Mich. 200.

[51] Harvey v. McDonnell, 113 N. Y. 526; Wilson v. Bynum, 92 N. C. 717; Dewey v. Moyer, 72 N. Y. 70; Bate v. Graham, 11 N. Y. 237; In re. Cornell, 110 N. Y. 351; Fort Stanwix Bk. v. Leggett, 51 N. Y. 552. This is the rule in regard to trustees. If, in a case of this kind, the refusal of the administrator to act is based upon what he considers the injustice of the claim, he may require the creditor to establish it in one of the modes provided by law; and if he has doubts as to the sufficiency of the evidence to set aside the transfer, he may require the creditor to give indemnity. Harvey v. McDonnell, supra.

[52] Harvey v. McDonnell, 113 N. Y. 526.

[53] Foster v. Bank of Abingdon, 88 Fed. Rep. 604. In this case the suit was based on frauds and losses growing out of gross negligence of the directors.

[54] People's Nat. Bank v. Loeff-

(l) The property of a debtor, though put into improvements on another's land, may be reached if the purpose is to place it beyond the reach of creditors.[55]

(m) A bill may be maintained by either prior or subsequent creditors against a corporation and its stockholders to compel the latter to account for property distributed among them without authority.[56]

(n) Under a decree for alimony in favor of the wife, the land of the husband may be levied on and sold, and a court of equity will protect the interest of the purchaser at such sale, as against the fraudulent transfers of the husband.[57]

(o) The salary of a county commissioner was held to be subject to a creditor's bill in Illinois, if the salary was wholly due. And so where the debtor was a United States marshal, or a postmaster, or a custom house measurer, or a judge of a city court. But a municipal corporation cannot be garnisheed.[58]

(p) The shares of stock in a corporation, when taken

ert (C. P.), 28 Pitts. L. J. N. S. 22. And so where the firm property has been transferred to one of the firm, at a time when the firm is insolvent. Johnston v. Straus, 26 Fed. Rep. 57.

[55] Dietz v. Atwood, 19 Ill. App. 96; Isham v. Schaffer, 60 Barb. 317; Lynde v. McGregor, 13 Allen 182; Athey v. Knotts, 6 B. Mon. 24.

[56] McKusick v. Seymour, 48 Minn. 158-172. A fund illegally distributed as a dividend to stockholders may be reached by judgment creditors. Grant v. Southern Contract Co. (Ky.), 47 S. W. 1091. In a proceeding against stockholders to recover unpaid stock, all stockholders need not be proceeded against. Siegel v. Andrews, 78 Ill. App. 611.

[57] Storrs v. Storrs, 58 Mich. 55.

[58] The indebtedness which may form the basis of a creditor's bill may be the salary of the defendant as county commissioner. The Singer & Talcott Stone Co. v. Wheeler, 6 Ill. App. 225. Cf. Browning v. Bettis, 8 Paige 568; McCoun v. Dorsheimer, Clark, Ch. 144; Thompson v. Nixon, 3 Edw., Ch. 457; Smith v. ———, 4 Edw., Ch. 653. So much as is due when the bill is filed may be reached. A municipal corporation cannot be garnisheed. Mayor v. Root, 8 Md. 95; Chealy v. Brewer, 7 Mass. 260; Bulkly v. Eckert, 3 Barr. 368; Burnham v. The City, 15 Wis. 193; McDougall v. Board, etc., 4 Minn. 184; Mayor v. Rowland, 26 Ala. 498; Bank v. Dibrell, 3 Sneed 379; Hawthorn v. St. Louis, 11 Mo. 59; Triebse v. Colburn, 64 Ill. 376. The salary of a county superintendent of common schools cannot be subjected to the payment of a judgment against him in an equitable proceeding under

by an assignee in exchange for property fraudulently transferred, may be reached by a creditor's bill and subjected to a sale for the payment of creditor's debts. It is a rule in equity that where a conveyance or transfer of property is set aside solely on the ground that it is constructively fraudulent as to creditors, it will yet be upheld to the extent of the actual consideration and be vacated only as to the excess. Not so, however, where the grantee participates in the fraud.[59]

(q) The plaintiff's judgment may be based upon bastardy proceedings. In such case, the equitable powers of the court are exercised to make effectual the remedy given by statute.[60]

(r) In an equitable proceeding to reach the property and effects of the debtor and apply the same to the satisfaction of plaintiff's indebtedness where, owing to the nature of the thing sought to be reached, a common law writ is inadequate and ineffectual the intangible right of an inventor in a patent or of an author in a copyright may be reached.[61]

Ky. Code Civ. Proc. Sec. 439. Heilbronner v. Posey (Ky.), 45 S. W. 505.

[59] Where a fraudulent transfer is made and the assignee transfers the property to a corporation for shares of stock therein, the court on a creditor's bill will subject the shares of stock to sale for the payment of creditors. Beidler v. Crane, 135 Ill. 92. Cf. Phelps v. Curts, 80 Ill. 109; Lobstein v. Lehn, 120 Ill. 549. If a transfer is for a valuable consideration ample in amount, and not, as a matter of fact, intended to accomplish covinous and dishonest purposes, yet if it involves trusts of a secret nature, not disclosed by the writings, the law regards the transaction as lacking the element of good faith and conclusively infers fraud. Beidler v. Crane, supra; Lukins, v. Aird, 6 Wall. 78; Metropolitan Bk. v. Godfrey, 23 Ill. 579; Moore v. Wood, 100 Ill. 451; Hurd v. Ascherman, 117 Ill. 501; Blannerhassett v. Sherman, 105 U. S. 100.

[60] Pierstoff v. Jorges, 86 Wis. 128; Baker v. Shote, 65 Wis. 50.

[61] Ager v. Murray, 105 U. S. 126; Gillett v. Bate, 86 N. Y. 87; Pacific Bk. v. Robinson, 57 Cal. 520; Stephens v. Cady, 14 How. 528; Pacific Bk. v. Robinson, 57 Cal. 520; Wilson v. Martin-Wilson Automatic Fire Alarm Co., 151 Mass. 515; McDermott v. Strong, 4 Johns. Ch. 688; Spader v. Davis, 5 Johns. Ch. 280. And see Carver v. Peck, 131 Mass. 291, where it was held that the suit could not be maintained under Mass. Gen. St., Ch. 113, Sec. 2, nor under the general practice without a judgment.

(s) The debtor's equitable interest in personal property cannot be seized on execution, but may be reached by a proceeding in equity, as when the debtor has an equity of redemption under a chattel mortgage, and there being no other property.[62]

(t) Generally, recovery may be had under a creditor's bill to reach the surplus arising from a sale under a mortgage foreclosure.[63]

(u) Money of a husband taken by his wife and used in the purchase of land in her own name, or the income of a life estate devised by a husband may be reached.[64]

The incorporeal and intangible right of an inventor in a patent or an author in a copyright cannot be taken on execution, but a general assignment by the debtor will pass the right to the assignee, or, at any rate, entitle the assignee by proper proceedings to compel the debtor to convey to him for the benefit of creditors. Carver v. Peck, 131 Mass. 291; Stephens v. Cady, 14 How. 528; Stevens v. Gladding, 17 How. 447; Hesse v. Stevenson, 3 B. & P. 565; Longman v. Tripp, 2 B. & P. (N. S.) 67; Mawman v. Tegg, 2 Russ. 385; Ashcraft v. Walworth, 1 Holmes C. C. 152; Murray v. Ager, 20 Pat. Off. Gaz. 1311 (N. S. 358); Doud v. Bonta Plate Glass Co., 28 Pitts. 6 L. J. Letters patent owned by a foreign corporation may be reached and applied in payment of a debt of the corporation, and in such case, if necessary, the master may be ordered to make the conveyance. Wilson v. Martin-Wilson, etc., Co., 151 Mass. 575.

[62] A debtor's equitable estate in personal property cannot be seized and sold under an execution. The judgment creditor is entitled to the aid of a court of equity to subject the debtor's equity of redemption in a chattel mortgage to the satisfaction of the debt, the debtor having no other property. Myers v. Amey, 21 Md. 302. The beneficial interest of the debtor in real estate may also be reached. Farnham v. Campbell, 10 Paige Ch. 598; Congdon v. Lee, 3 Edw., Ch. 304.

[63] Wiggin v. Heywood, 118 Mass. 514. (See Statute.) Judge v. Herbert, 124 Mass. 330; Wessel v. Brown, 10 Lea 685. But see Eastern Electric Cable Co. v. Great Western Mfg. Co., 164 Mass. 274, 41 N. E. 295; Carter v. Wyrick (Tenn.), 42 S. W. 159. Bonds issued by a railroad company, but not as a substitute for an equity of redemption purchased by it, are not subject to a creditor's bill filed to reach the equity of redemption. Merriman v. Chicago & E. I. R. Co. 66 Fed. Rep. 663, and 64 Fed. Rep. 535.

[64] Bresnihan v. Sheehan, 125 Mass. 11. The income of an estate for life devised to a wife by her husband for her comfort and support is an absolute gift to the wife, and may be reached by her creditors. Maynard v. Cleaves, 149 Mass. 307. It would be otherwise if the testator gave a qualified estate instead of an absolute one, but the language of the testator must clearly show an intention not to make the devise liable for her debts. Broadway Nat. Bk. v. Adams, 133 Mass. 170; Foster v. Foster, 133 Mass. 179; Sears v. Choate, 146 Mass,

(v) Money to become due the debtor on a contract.[65]

(w) The separate estate of a married woman.[66]

(x) The interest of a partner in a copartnership, after partnership creditors have been paid.[67]

(y) Money due the debtor on a life insurance policy.[68]

395; Cf. Baker v. Brown, 146 Mass. 369.

[65] Love v. Bret Harte, 118 Mass. 271. But see Donovan v. Finn Hopk., Ch. 59. Though formerly doubted, the right of a judgment creditor to reach money due the debtor is no longer questioned. McMannomy v. Chicago, D. & O. R. Co., 167 Ill. 497. To reach money due on a note see Blackman v. Houssels, (Tex.) 35 S. W. 511. Where there is no equitable ground of relief it has been doubted if the court has power to reach the choses in action of the debtor. Greene v. Keene, 14 R. I. 388. This is based upon the idea that at common law a lien upon choses in action could not be acquired by a judgment and execution. Green v. Tautum, 19 N. J. Eq. 105. That they may be reached, see Adams v. Cross, 27 Ill. App. 313.

[66] Robinson v. Trofitter, 109 Mass. 478. See Hulme v. Tenant, 1 Bro. C. C. 16; Gardner v. Gardner, 22 Wend. 526; Vanderheyden v. Mallory, 1 Compst. 452; Leaycraft v. Hedden, 4 N. J. Eq. 512; Oakley v. Pound, 14 N. J. Eq. 178.

[67] Eager v. Price, 2 Paige, Ch. 334. Where an action is brought by creditors to charge an estate in the hands of executors and trustees for debts created by the surviving partner after the death of his copartner where the surviving partner is insolvent the action is not maintainable even though it is provided by the partnership agreement that in case of death the business is to be continued by the survivor for a term of years. Stewart v. Robinson, 115 N. Y. 328. When a partner died directing in his will that his executors should conduct his interest in the business of the firm in conjunction with the personal representatives judgments were subsequently rendered in a suit which was brought, among other things, to set aside executions, it was held that the executors were copartners in the business and the claims were against the partnership primarily and not upon testator's general estate. Columbus Watch Co. v. Hodenpyle, 135 N. Y. 430. A bill to reach money alleged to be due under contract for labor under an assignment which is alleged to be colorable and to protect the interest of the parties against creditors where it appears that the assignment was bona fide and absolutely necessary to protect the copartnership who had advanced to the debtor large sums of money was not sustained. Stamets v. Quinn, 27 N. J. Eq. 383. Creditors' bill may be filed to reach separate property of each partner on a joint execution. Randolph v. Daly, 16 N. J. Eq. 313. Notes given by a purchaser of partnership property of an insolvent firm on account of the purchase money made payable to the order of the wife of one of its members and by her husband given to her are void in her hands as to creditors of the firm. Van Doren v. Stickle, 24 N. J. Eq. 331. The interest of a partner in the firm where he has made an individual assignment cannot be reached by firm creditors to the exclusion of individual creditors under the assignment. Goodwin v. Einstein, 51 How. Pr. 9.

[68] Anthracite Ins. Co. v. Sears,

(z) Money due on a judgment for personal injuries on an assigned claim of the debtor therefor.[69]

(aa) Or the proceeds of property fraudulently sold.[70]

(bb) Or to reach the proceeds due on a note secured by mortgage on real estate where the note has been transferred to a person beyond the jurisdiction of the court in fraud of creditors.[71]

(cc) Or the principal and income of a legatee's interest in a trust fund in the hand of a trustee (Mass.).[72]

(dd) Or the right of a widow to a dower interest in land.[73]

(ee) Or to reach the equitable interest of the debtor in land purchased by him.[74]

109 Mass. 383. The insurance company may be a foreign corporation. A judgment creditor may have an interest in a contract for life insurance arising under a statute permitting a wife to insure her husband's life where the premiums paid by the debtor exceed $500.00 and the right of the judgment creditor may be impressed upon the contract in an action where the companies and all persons interested are parties, though the money may not be due under the policies. Stokes v. Amerman, 121 N. Y. 337; S. C. 31 N. Y. S. R. 391. It was also held in this case that premiums paid by the debtor from his own property on a policy for the benefit of his wife in excess of $500 could be recovered before the death of the husband and wife.

[69] Where one person has obtained a judgment for personal injuries a bill in equity may be maintained to compel payment to a creditor out of the judgment, though the claim for injuries on which the judgment was rendered had been assigned before judgment to another. Rice v. Stone, 1 Allen 566.

[70] Cook v. Smith, 3 Sandf. Ch. 334.

[71] Moody v. Gay, 15 Gray 457. A bill cannot be maintained to obtain the benefit of a mortgage given by a person in the state to a person beyond such jurisdiction as security for a note held by the latter, or some person unknown. Sanger v. Bancroft, 12 Gray 365.

[72] Forbes v. Lathrop, 137 Mass. 523.

[73] McMahon v. Gray, 150 Mass. 289; Payne v. Becker, 87 N. Y. 153; Tompkins v. Fonda, 4 Paige 448; Davison v. Whittlesey, 1 MacArthur 163; Boltz v. Stolz, 41 Ohio St. 540. This right is based on the principle that in equity a widow can assign her right of dower. It is a valuable right in property and is capable of being assigned. McMahon v. Gray, 150 Mass. 289; Lamar v. Scott, 4 Rich. 516; Robie v. Flanders, 33 N. H. 524; Potter v. Everitt, 7 Ired. Eq. 152; Strong v. Clem, 12 Ind. 37; Payne v. Becker, 87 N. Y. 153; Pope v. Mead, 99 N. Y. 201; Petefish v. Buck, 56 Ill. App. 149; Thompson v. Marsh, 61 Ill. App. 269.

[74] Ellsworth v. Cuyler, 9 Paige 418. But not until legal reme-

(ff) A creditor of a deceased person can maintain an independent suit in equity to set aside for fraud a sale of real estate of the deceased made under the order of court, though he was a party of the proceeding, where it appears that he was not a party to the fraud and was ignorant of it until after confirmation or homologation of the sale.[75]

(gg) To reach the individual interest of the judgment debtor in the proceeds of a judgment recovered by such judgment debtor as administrator for the negligent cause of the death of his son.[76]

(hh) Where the statute authorizes a creditor to file a bill and recover usury paid by the debtor.[77]

(ii) To reach a note pledged as collateral.[78]

(jj) To reach a vested remainder belonging to the debtor.[79]

(kk) To reach money of the debtor deposited in a bank in the name of his wife.[80]

§ **17. When Not Sustained.**—(a) A bill will not be sustained to reach property purchased with the money of an estate and conveyed to the executrix in a suit by the individual creditors of such executrix.[81]

dies are exhausted by the return of an execution unsatisfied. Grosvenor v. Allen, 9 Paige Ch. 74. And so where the interest of the debtor in land is of such nature as not to be liable under execution or where the title would not pass under a sale under execution. Millard v. Parsell, 77 N. W. 390.

[75] A creditor of a deceased person can maintain an independent suit in equity to set aside for fraud a sale of real estate of the deceased made under the order of court though he was a party of the proceeding where it appears that he was not a party to the fraud and was ignorant of it until after confirmation or homologation of the sale. Johnson v. Waters, 111 U. S. 640. And so where the land of the testator has been divided among his representatives, it is subject to a judgment obtained against the testator in his lifetime. Davis v. Whipp, 48 S. W. 984.

[76] Casady v. Grimmelman, 77 N. W. 1067.

[77] Ryan v. Krise, 89 Va. 728.

[78] Long v. Page, 10 Humph. (Tenn.) 541.

[79] Nichols v. Levy, 72 U. S. 433.

[80] May be filed to reach money of debtor deposited in a bank in name of wife. Gullickson v. Madsen, 87 Wis. 19.

[81] Alterauge v. Christiansen, 48 Mich. 60. For a case holding

(b) A creditor's proceeding will not be sustained in behalf of a creditor, who has taken a deed of trust upon his debtor's land and bid thereon a part of his debt, for the purpose of setting aside a prior recorded deed on the ground that it was without consideration and in fraud of creditors. In such case he occupies the position of a purchaser rather than that of a creditor.[82]

(c) A mortgagee who has not offered to surrender his security or to sell the mortgaged property is not entitled to file a creditor's bill.

(d) Where it is sought to reach an indebtedness due to the debtor who is a non-resident from a resident creditor of the debtor, and there is no personal service on the latter and he does not enter his appearance, the bill will not be maintained for the reason that the creditor would not be protected outside of the state in his payment under the decree.[83]

(e) The land sought to be reached and applied in

that the facts were not sufficient to warrant the relief prayed for see Lehman v. Meyer, 67 Ala. 396, overruling Crawford v. Kirksey, 50 Ala. 590.

[82] Tyler v. Hamblin, 11 Heisk 152. Magill v. Hyatt, 80 Md. 253.

[83] Lave v. Bowen, 2 Jones' Eq. (N. C.) 49; Nicholson v. Leavitt, 4 Sandf. N. Y. 252. This case is based upon the idea that the equitable proceeding is based upon a judgment lien rather than an exhaustion of legal remedies. Cf. Bailey v. Ryder, 10 N. Y. 363. In Sercomb v. Catlin, 128 Ill. 556, it is said that "Where a court of equity has jurisdiction over the person of a defendant, it is familiar learning that it may make decrees and orders affecting his property which is situated outside of its jurisdiction." Langford v. Langford, 5 L. J. (N. S.) Ch. 60; Chaffee v. Quidnick Co. 13 R. I. 442; Dehon v. Foster, 4 Allen 545; Vermont R. Co. v. Vermont R. Co., 46 Vt. 792. Mr. Justice Story says: "But although the courts of one country have no authority to stay proceedings in the courts of another, they have an undoubted authority to control all persons and things within their own territorial limits." Story Eq. Jur. Secs. 899, 900. And see Cole v. Cunningham, 133 U. S. 107; Pennoyer v. Neff, 95 U. S. 714. Mr. Justice Swayne in Phelps v. McDonald, 99 U. S. 298, says: "Where the necessary parties are before a court of equity it is immaterial that the res of the controversy, whether it be real or personal property, is beyond the territorial jurisdiction of the tribunal." And see Penn v. Lord Baltimore, 1 Ves. Sr. 444; Massie v. Watts, 6 Cranch 148; Watkins v. Holman, 16 Pet. 25; Corbett v. Nutt, 10 Wall. 464.

payment of the plaintiff's debt will not, if beyond the state, be subject to the lien of the judgment, and, therefore, though fraudulently conveyed, cannot be the basis of a creditor's suit. This doctrine, while theoretically correct, is not strictly true for the reason that the debtor may be subject to the jurisdiction of the court, and by reason of its power over him may compel a conveyance by him to a receiver and enforce its jurisdiction in a proceeding in the nature of a *personam* action rather than *in rem*.

(f) Where a corporation deposited certain funds for the benefit of all creditors, a suit will not be maintained in behalf of an individual creditor for his personal benefit and to the prejudice of other creditors, unless, indeed, the funds are sufficient to pay all creditors in full, in which case the other creditors should be brought into court and their rights protected. It will be seen elsewhere that a trust fund for the benefit of all creditors cannot be appropriated for the individual benefit of one.[84]

(g) In jurisdictions where the doctrine prevails that a judgment lien is a necessary prerequisite to the filing of a creditor's bill, the lien must be a subsisting lien. Thus, where an attachment is levied and before judgment the debtor dies and judgment is taken against the administrator only, the bill cannot be based on the attachment, as the lien is dissolved by the debtor's death.[85]

(h) The death of an administrator before the estate is administered does not entitle a creditor of the deceased debtor to institute a proceeding in equity where

[84] Crowell v. Cape Cod Ship Canal Co., 164 Mass. 235.

[85] Phillips v. Ash, 63 Ala. 414. A person who has no assignment of nor lien on a fund in court cannot intervene and claim such fund, though he is a creditor. Tuck v. Manning, 150 Mass. 211.

the probate, or orphan's court, affords an adequate remedy. A successor of the deceased executor may be appointed, usually provided for by statute.[86]

(i) The mere fact that an administrator has power given to him by statute to sell real estate to pay debts of the decedent does not authorize him to file a bill to cancel and set aside a fraudulent conveyance made by the intestate. There must be found some specific power to entitle him so to do.[87]

(j) And where an administrator is authorized by law to set aside a conveyance made by the decedent in fraud of creditors, it is essential that there shall be a creditor of the estate whose claim has been presented. This is necessary in order to bring the case within the terms of the statute.[88]

(k) A creditor's bill will not lie against a city to reach money due from it to a contractor. This doctrine is based upon the ground of public policy. To permit the great public duties of a city to be imperfectly performed in order that individuals may collect their private debts would be to pervert the great objects of the city's creation. Its efficiency for the purposes of government would be impaired by any other rule. A municipal corporation cannot properly be turned into an instrument or agency for the collection of private debts. It exists simply for the public welfare, and cannot be required to consume the time of its officers or the money in its treasury in defending suits in order that one private individual may the better collect a demand due from another.[89]

[86] Magill v. Hyatt, 80 Md. 253.

[87] Majorowicz v. Payson, 153 Ill. 484.

[88] Field v. Andrader, 106 Cal. 107.

[89] Addyston Pipe & S. Co. v. City of Chicago, 170 Ill. 580; affirming 58 Ill. App. 273; Chamberlain v. Gaillard, 26 Ala. 504; City of Memphis v. Laski, 65 Tenn. 511; People ex rel. v. Omaha, 2 Neb. 166; Hightower v. Slaton, 54 Ga. 108; Wallace v. Sawyer, 54 Ind. 501; School

(l) A suit will not be maintained in the United States Circuit Court to set aside fraudulent conveyances made by a surety on a bond based on a judgment against the principal in another district to which the surety was not a party.[90]

(m) A court of equity will not assume jurisdiction of the sale of chattels for the benefit of creditors and those having legal liens merely upon the ground that a better price can be obtained for all parties than in a common law proceeding.[91]

(n) Where land has been purchased under a contract and the contract has been violated and for that reason has been rescinded, it cannot be taken under a creditor's bill, though part of the purchase money was paid thereon.[92]

(o) Property purchased by a husband in good faith and with no fraudulent intent may be conveyed to his wife, and such conveyance will be good and valid as to subsequent creditors where he is not indebted at the time.[93]

(p) In order that a recovery may be had under a bill filed to set aside a conveyance alleged to have been fraudulent as to creditors, it is incumbent on the plaintiff to show that the property conveyed was substantially all of the debtor's property, or that at the time of the conveyance he was insolvent, or was rendered so

Dist. v. Gage, 39 Mich. 484; McDougal v. Board of Sup., 4 Minn. 184; Burnham v. City of Fond du Lac, 15 Wis. 193; and see Merwin v. City of Chicago, 45 Ill. 133. A creditor's bill can be maintained against a municipal corporation as a party defendant. Hinsdale Doyle Granite Co. v. Tilley, 10 Biss. C. Ct. 572. A creditors' bill may be maintained under Kan. Civ. Code, Sec. 481, to subject to the payment of a judgment a county warrant in the hands of a county clerk, which cannot be reached by an execution or by the ordinary proceedings in aid thereof. Clarke v. Bert, 2 Kan. App. 407.

[90] United States v. Ingate, 48 Fed. Rep. 251.

[91] Lambert v. Miller, 37 N. J. Eq. 344.

[92] Alexander v. James, 13 Ill. 221.

[93] Curtis v. Fox, 47 N. Y. 299.

by the conveyance. If it does not so appear, the bill will not be sustained.[94]

(q) Where the grantee is free from fraud on his part and enters into possession, makes improvements and pays off incumbrances upon property, the deed will not be set aside at the instance of subsequent creditors without compensation for his expenditures.[95]

(r) A patent-right is not an interest that can be reached by a bill in equity, under Gen. St. Ch. 113, § 2, Cl. 11, Mass.[96]

(s) Nor will a creditor's bill be sustained where the money sought to be reached is for services rendered by the debtor's assignee in completion of a contract unfulfilled by him.[97]

(t) Nor where the assignee of a chose in action cannot sue in his own name.[98]

(u) To recover rents due or to become due.[99]

[94] Kain v. Larkin, 131 N. Y. 300.

[95] A creditor's bill will be sustained in behalf of a subsequent creditor where the debtor conveys property to defraud creditors to his brother-in-law, who entered into possession, made improvements and paid off incumbrances thereon, but the value of the improvements and the amount due on the mortgages must first be paid. King v. Wilcox, 11 Paige Ch. 589.

[96] A patent right owned by a resident of Massachusetts is not an interest which can be reached by his creditor by bill in equity under Mass. Gen. St. ch. 113, Sec. 2, cl. 11. Carver v. Peck, 131 Mass. 291; nor under the general practice without a judgment. Cf. Stevens v. Gladding, 17 How. 447; Ashcraft v. Walworth, 1 Holmes C. C. 152; Gordon v. Anthony, 16 Blatchf. C. C. 234.

[97] Dearborn v. Kemble, 5 Allen 372.

[98] A bill in equity will not be maintained merely on the ground that an assignee of a legal right cannot sue in his own name. Walter v. Brooks, 125 Mass. 241; Hammond v. Messenger, 9 Sim. 327; Dhegetoft v. London Assurance Co., Mosely's Rept. 83; Fall v. Chambers, Mosely's Rept. 193; Motteux v. London Assurance Co., 1 Atk. 545; Cator v. Burke, 1 Bro. Ch. 434; Carter v. United States Ins. Co., 1 Johns. Ch. 463; Adair v. Winchester, 7 Gill & J. 114; Moseley v. Boush, 4 Rand 392; Smiley v. Bell, Mart & Yerg. 378; Ontario Bk. v. Mumford, 2 Barb. Ch. 596. See contra Story Eq. Jur., Sec. 1057 a; Story Eq. Pl., Sec. 153; Townsend v. Carpenter, 11 Ohio 21. If this were not the law all that would be necessary to transfer a common law action to a court of chancery would be to make an assignment of the legal right.

[99] Rents due and to become due cannot be reached. Those due may be reached at law and

(v) To reach the debtor's distributive share of an estate in the hands of an administrator.[1]

(w) Nor to recover the balance due on a deficiency decree or judgment, after a foreclosure sale, until the master's report showing a deficiency has been confirmed by the court.[2]

(x) Nor where the debtor is in custody of an officer under a writ of ca. sa.[3]

(y) Nor to reach trust property where by will the property is rendered inalienable and not subject to being reached by creditors.[4]

(z) Nor where the debtor is a foreign corporation and its property is in the hands of a receiver appointed in the state where the corporation is located before judgment rendered.[5]

(aa) Nor to reach a promissory note given by a resident partner to his former partner, who is a non-resident of the state, in a proceeding by firm creditors.[6]

those not due cannot be reached in equity. Schlesinger v. Sherman, 127 Mass. 206.

[1] Emery v. Bidwell, 140 Mass. 271; Boston Bk. v. Minot, 3 Metc. 507; Vantine v. Morse, 104 Mass. 275.

[2] Bank of Rochester v. Emerson, 10 Paige Ch. 115.

[3] Stillwell v. Van Epps, 1 Paige Ch. 615; Horn v. Horn, 1 Ambler's Rep. 79; Jackson v. Benedict, 13 John. 534.

[4] The founder of a trust may secure the income of it to the object of his bounty by providing that it shall not be alienable by him or be taken by his creditors. Baker v. Brown, 146 Mass. 369; Broadway Nat. Bk. v. Adams, 133 Mass. 170. And it need not be in express terms but may be gathered from the instrument. Cf. Bartholomew v. Weld, 127 Mass. 210; Baker v. Brown, 146 Mass. 369; Broadway Nat. Bk. v. Adams, 133 Mass. 170; Thackara v. Mintzer, 100 Pa. St. 151; Steib v. Whitehead, 111 Ill. 247; Lampert v. Haydel, 20 Mo. App. 616; Chambers v. Smith, 3 App. Cas. H. of L. 795; Cf. Perkins v. Hayo, 3 Gray 405; Russell v. Gruwell, 105 Mass. 425; Brahman v. Stiles, 2 Pick. 460; Hall v. Williams, 120 Mass. 344; Sparhawk v. Cloon, 125 Mass. 263. But this doctrine is not applicable where there is in the will no limitation over of the estate in any contingency to any other person, and where there is no limitation on the power of disposal. Sears v. Choate, 146 Mass. 395; Sparhawk v. Cloon, 125 Mass. 263. Trust property held in trust for a debtor to receive the rents, profits and income to be applied to the support of the cestui que trust. Degraw v. Clason, 11 Paige Ch. 136.

[5] Thomas v. Merchants Bk., 9 Paige 216.

[6] Davis v. Werden, 13 Gray 305.

(bb) Nor to recover debts due the debtor in a foreign jurisdiction in an action by a receiver where there is no power given by statute.[7]

(cc) Nor to reach the contingent right in expectancy of the debtor in the estate of another.[8]

(dd) Nor to reach property which did not belong to the debtor when the bill was filed.[9]

(ee) Nor can it be sustained to reach property in the hands of the debtor under Mass. Gen. Stat., Ch. 113, § 2, but it must be in the possession or control of a third person.[10]

(ff) Nor to reach exempt property, or money arising from the sale of a homestead.[11]

[7] Where a bill was filed and it was sought to reach and apply in payment of the plaintiff's debt money due from various persons, through a receiver, it was held that without the aid of statutory power such debts would not pass to the receiver by virtue of his appointment, nor would a receiver have power to sue and recover such debts in a foreign jurisdiction. Amy v. Manning, 149 Mass. 487; Harvey v. Varney, 104 Mass. 436; Booth v. Clark, 17 How. 322; Brigham v. Ludddington, 12 Blatchf. 237; Yeager v. Wallace, 44 Pa. St. 294. Under a statute debts due from non-residents cannot be reached in an equitable proceeding unless the nature of the debts and the persons who owe them are described so that the court can give notice if necessary. Id. Amy v. Manning, 149 Mass. 487.

[8] Smith v. Kearney, 2 Barb. Ch. 533.

[9] Sampson v. Taylor, 1 Ch. Sent. 89; Eager v. Price, 2 Paige Ch. 333. Subsequently acquired property may be reached by a supplemental bill to the original bill. Eager v. Price, 2 Paige Ch. 333.

[10] Phoenix Ins. Co. v. Abbott, 127 Mass. 558.

[11] Where the statute exempts pensions granted to those in the military service from executions, and such pensions are invested in property suitable to the support of the pensioner and his family the property is exempt. Yates Co. Bk. v. Carpenter, 119 N. Y. 550. This rule applies to the purchase of a home, but it would be otherwise if the pension funds are embarked in business and mingled with other funds. Id. Equity will not reach exempt property or rights of action for injury to such property. Hudson v. Plets, 11 Paige Ch. 180; nor rights of action for personal tort such as assault and battery, slander and malicious prosecution, Id., but it will reach a right of action for injury to property which was liable for the debt. Id. Money in the hands of a sheriff derived from the sale of a homestead under an execution which was a lien thereon cannot be paid over on the order of court to another judgment creditor who had no lien on the homestead where such money was intended by the debtor to be used in redeeming the property from the sale, or intended to be used in the purchase of another home-

(gg) Nor to reach a debt falling due to the debtor after insolvency proceedings are begun, the debtor having received a discharge.[12]

(hh) Nor where the bill is filed to assist the debtor in hindering and delaying his creditors.[13]

(ii) Nor where the personal property of the execution debtor is abundantly sufficient in amount to satisfy the judgment and the remedy at law is neither uncertain nor insufficient.[14]

(jj) Where lands conveyed by a father to his son as a security for a *bona fide* debt and which have been sold and the proceeds applied to the payment of the encumbrance, a bill will not be sustained in favor of creditors seeking to open up the transaction and to compel an accounting by the grantees.[15]

(kk) A court of equity will not assume jurisdiction of the sale of chattels for the payment of creditors and incumbrancers having legal liens thereon where the sole ground of jurisdiction claimed is that a sale to a greater advantage to all parties, so far as price is concerned, than can be otherwise obtained in a legal proceeding can be had.

(ll) The good will of a business transferred in fraud

stead. Mitchell v. Milhoan, 11 Kan. 617. A bill to reach land bought by the debtor with bounty money received by him as a volunteer in the war of 1861, the deed being in his wife's name, was sustained, as Me. Laws 1862, Ch. 106, Sec. 2, which exempted from attachment, during a volunteer's service, his personal property to the amount of $1,000 in value, did not apply. Knapp v. Beattie, 70 Me. 410. Where a debtor was directed to assign his property to a receiver it was held not necessary to except exempt property in the assignment as it would not pass. Degraw v. Clason, 11 Paige Ch. 136.

[12] A non-resident creditor whose claim though provable was not proved against an estate of insolvency but has been reduced to a judgment cannot maintain a bill in equity under Mass. Pub. Stat. Ch. 151, Sec. 2, cl. 11, to reach and apply in payment of the judgment a debt which became due the debtor after the insolvency proceedings were begun, the debtor having obtained a discharge. Venable v. Rickenberg, 152 Mass. 64.

[13] A creditor's bill will not be sustained to assist the debtor to hinder and defeat his creditors. Ruckman v. Conover, 37 N. J. Eq. 583.

[14] Brock v. Rich, 76 Mich. 644; Pierce v. Rich, 76 Mich. 648.

[15] Cole v. Lee, 45 N. J. Eq. 779.

of creditors cannot be reached, nor can the transferee be required to account therefore.[16]

(mm) To reach amount of verdict for personal injury before judgment.[17]

(nn) Where a deed is void for uncertainty in the description, there is a plain remedy at law by levy and sale.[18]

(oo) A judgment against an executor who has been discharged as such gives no right of complaint in regard to a conveyance by the testator, since the judgment was at no time a lien on the lands of a testator.[19]

(pp) If an equitable attachment is prohibited by statute, a bill in equity will not be sustained. If it could be, a mere change in form of the proceedings would be an evasion of the statute.[20]

If, in Massachusetts, property is of such nature that it may be taken under attachment or trustee process, a bill in equity will not lie. If, however, the property is of such nature that it may be taken in attachment or trustee process, but the debt is of such nature or special kind that it cannot be collected by attachment or trustee process, then equity will not accomplish indirectly that which is prohibited at law.[21]

(qq) The equitable powers of the court will not be invoked at the instance of a creditor of trustees for an indebtedness created in carrying out the trust.[22]

(rr) A house, bought by the earnings of emancipated minor children, cannot be reached by judgment creditors of the husband.[23]

[16] Lilienthal v. Drucklieb, (C. C. S. D. N. Y.) 84 Fed. Rep. 918.
[17] Bennett v. Sweet, 171 Mass. 600.
[18] Trentman v. Neff, 124 Ind. 503.
[19] Applegate v. Applegate, (Ia.) 78 N. W. 34.
[20] Venable v. Rickenberg, 152 Mass. 64.
[21] Venable v. Rickenberg, 152 Mass. 64.
[22] Mayo v. Moritz, 151 Mass. 481.
[23] Geringer v. Heinlein (Ohio C. P.) 29 Ohio L. J. 339 (Week. L. Bul.)

(ss) The interest of a debtor in rents due and to become due under a lease. (See Stat.)[24]

§ **18. May Reach Real or Personal Property.**— This proceeding in equity may be sustained alike as to personal property and real property and their proceeds, though the evidence frequently varies as to the two kinds of property growing out of the different rules as to possession and ownership, and the right of action may be based upon a fraudulent deed or mortgage by the debtor, or upon a failure to file as required by statute.[25]

A tax is such a debt as may be made the basis of a creditor's bill.[26]

§ **19. When Pendency of Suit Not a Bar to Another Suit.** — The pendency of a bill in behalf of the plaintiff and other creditors is not a bar before decree to another bill subsequently filed by another creditor who was not a party to the first suit.[27]

§ **20. Amount Due On Judgment Immaterial.**— Where a judgment creditor seeks to reach the excess over a mortgage on premises, the actual amount remaining due on the judgment is immaterial. The fact that the judgment is not entirely paid is sufficient, as between the judgment creditor and the grantee of the debtor.[28]

§ **21. Holder of Security Not Barred.**—The equitable remedy of a creditor is not taken away by the fact that he has security. It is familiar law that the holder of collateral security for a debt is not confined to that

[24] Schlesinger v. Sherman, 127 Mass. 206; Rankin v. Wilsey, 17 Ia. 463; but see Le Roy v. Matthewson, 47 N. Y. Supr. Ct. 389. Under equitable circumstances the court has the right to apportion rents as where the debtor has made improvements on the land of another. Attrey v. Knotts, 6 B. Mon. 24.

[25] Webb v. Staves, 1 App. Div. 145, 37 N. Y. Supp. 414.

[26] State v. Georgia Co., 112 N. C. 34.

[27] Alabama I. & S. Co. v. McKeever (Ala.), 112 Ala. 134.

[28] Dunton v. McCook, 93 Iowa, 258.

security. And in case of a mortgage, at most, it is merely collateral to the debt, and, of course, is no bar to any other legal remedy. The remedy is in the nature of an attachment by an equitable trustee process.[29]

§ 22. **Property Applied According to Equitable Methods.**—Where a court of equity has acquired jurisdiction in matters of fraudulent conveyances it will apply the property to the satisfaction of the plaintiff's debt in accordance with its own methods of proceeding. And, having jurisdiction, it will adjust the conflicting rights and interests of all parties concerned, and distribute the property or its proceeds as equity may require.[30]

If the property sought to be reached and applied has been converted into money by decree of the court, in such case the liens and charges against the property are preserved in the fund, as they existed at the time of the conversion.[31]

§ 23. **Money Paid by Debtor on Contract of Purchase Recoverable.**—Creditors of a deceased debtor are entitled to the money paid by the debtor as part consideration for land purchased under a contract which has been rescinded, upon a bill filed by them for the purpose of reaching such money unless the effects of the debtor must be distributed to all creditors under the statute relating to administration.[32]

§ 24. **Right of Recovery Depends on Debtor's Right.**—The right to recover assets in the hands of a

[29] Tucker v. McDonald, 105 Mass. 423; Taylor v. Cheever, 6 Gray 146; 1 Story Eq. Jur. Sec. 547 and cases cited.

[30] McCalmont v. Lawrence, 1 Blatchf. 232.

[31] Cahn v. Person, 56 Miss. 360.

[32] Under the prayer for general relief, creditors are entitled to the money paid by their debtors as part consideration for land under a contract which has been rescinded, unless the effects should have been distributed for the benefit of all creditors under the statute of wills. Alexander v. Tams, 13 Ill. 221; Pinnock v. Clough, 16 Vermont, 500; Graves v. Dugan, 6 Dana 331.

third party through the instrumentality of a creditor's bill depends upon the right of the debtor to recover the same, and, therefore, where the right of set-off is involved, if it could be maintained against the debtor, it will be maintained in a suit by creditors. This is on the principle that the plaintiff as to such third person has no greater right than existed in the debtor. Of course this rule has no application to a case where the debtor has committed a fraud, and is, therefore, incapacitated from obtaining relief in a court of equity.[33]

§ 25. Equitable Assets—Power of Court Over.—The law in regard to equitable assets and the power of the court of equity to reach them and the rights of creditors to participate in the distribution thereof, or in their proceeds, has been the subject of fruitful litigation, and the decisions are not, on all points, entirely harmonious, but the great weight of authority, as well as reason and justice, would seem to establish the following propositions:

1. At common law, executions upon judgments could not be levied upon estates merely equitable, because courts of law did not recognize any such titles and could not deal with them.

2. In the matter of equitable estates, a court of equity will, as a general rule, apply thereto by analogy the same rules as a court of law would apply if they were legal estates.

[33] The right to reach and recover assets in the hands of a third person depends on the right of the debtor to recover the same. If as against the debtor a right of set-off exists it will be good as against the plaintiff in a creditor's suit. Boute v. Cooper, 90 Ill. 440. Probably a set-off could not be procured after the filing of the bill for the purpose of defeating it. The scope of a creditor's bill is such that it will not lie to reach property which the latter could not reach in his own name, as where a person is indebted to the debtor but has an off-set to such indebtedness to the extent thereof. The principle here involved has no relation to a case of fraudulent conveyance in which the grantor could not sue.

3. Where by statute the remedies of judgment creditors have been enlarged as to the legal estate of their debtors, the remedies of judgment creditors have been correspondingly enlarged as to the equitable estate of their debtors. *Æquitas sequitur legem.*

4. Where by a common law proceeding a lien is acquired upon the judgment debtor's property which is tangible and subject to levy, a judgment creditor by a proceeding in equity obtains a *quasi* lien or privity, which is enforced against the equitable assets not subject to levy under an execution at law. This right, lien or priority, is sometimes called an equitable levy.

5. Sometimes the equity jurisdiction is put in force as ancillary to the judgment, as when a judgment has been obtained against the debtor and an execution issued thereon and an obstruction is met with which must be removed before further proceedings under the execution can be taken.

6. Where the estate is equitable merely, and not subject to execution at law, a court of equity interposes, not by reason of the lien of the judgment as has sometimes been supposed, but on equitable ground, and applies the equitable assets to the satisfaction of the judgment.

7. Inasmuch, in such a case, as there is no other method of satisfying the plaintiff's judgment except by a resort to equitable assets, the plaintiff, by reason of his diligence, is given a priority over other creditors, but this is not by reason of a lien of his judgment and execution, but a reward for his vigilance dating from the filing of his bill.

8. This priority given to the plaintiff must, of course, be subject to all existing liens on the property and effects; but he may, if he so elect, file his bill in behalf of all other creditors similarly situated who shall come

in and be made parties on a contribution of their proportionate share of the costs and expenses.

9. While it is the favorite policy of a court of equity to distribute assets equally among creditors *pari passu,* yet whenever a judicial preference is created by superior legal diligence of any creditor that preference or priority will be protected.[34]

Ordinarily and strictly equitable assets are property, and funds belonging to the estate of a decedent which by law are not subject to the payment of his debts in the course of administration, but which the debtor has voluntarily charged with the payment of debts generally, or which, being non-existent at law, have been created in equity under circumstances which fasten upon them such a trust.

To constitute equitable assets, the trust imposed by the party or the court must be for the benefit of creditors generally.[35]

Equitable assets may also be reached by a creditor's bill filed to reach property fraudulently conveyed.[36]

§ 26. Evidence Required.—It is essential in order to set aside a conveyance as fraudulent and void as to creditors that the evidence shall establish notice on the part of the vendee of the fraudulent intent on the part of the vendor or knowledge on his part of circumstances which are equivalent to notice or from which the law will imply notice.[37]

[34] Freedman's Sav. & Tr. Co. v. Earle, 110 U. S. 710; Morrell v. First Nat. Bk., 91 U. S. 357; Jones v. Green, 68 U. S. 330; Sharpe v. Earl of Scarborough, 4 Ves. 538; Edmeston v. Lyde, 1 Paige Ch. 637, 640; Day v. Washburn, 65 U. S. 352; McDermott v. Strong, 4 Johns. Ch. 687.

[35] Freedman's Sav. & Tr. Co. v. Earle, supra. In this case there is a valuable review of English and American cases on the subject of equitable assets.

[36] Le Duc v. Brandt, 110 N. C. 289.

[37] Bush v. Roberts, 111 N. Y. 278. If the grantee knew or had believed the motives of the vendor to be fraudulent then by aiding him in the scheme the vendee made himself a party to the fraud. Parker v. Conner, 93 N. Y. 118.

Declarations of the vendor made after the conveyance showing or tending to show a fraudulent purpose are not competent evidence as to the vendee, and particularly so if not made in his presence and hearing. In order that the declarations of a party, which are claimed to be a part of the transaction, may be admissible, they must grow out of the principal fact or transaction, illustrate its character, be cotemporaneous with it, and derive some degree of credit from it.[38]

§ 27. Injunction not Granted to General Creditor. — A court of equity will not grant an injunction on the application of a creditor who has a mere legal demand restraining another creditor from selling the debtor's property upon an execution based upon a judgment fraudulently confessed. In such case the plaintiff seeking to enjoin must reduce his claim to a judgment before he seeks to impeach another judgment in favor of another creditor.[39]

This in accordance with the general doctrine, to which there are but few exceptions, that a general creditor is not entitled to an injunction or receiver against his

[38] Bush v. Roberts, 111 N. Y. 278; Lund v. Tyngsborough, 9 Cush. 36. The mere declarations of an assignor of a chose in action forming no part of the res gestae are not competent to prejudice the title of his assignee, whether the assignee be one for value or merely a trustee for creditors and whether such declarations be antecedent or subsequent to the assignment. Truax v. Slater, 86 N. Y. 630; Tousley v. Barry, 16 N. Y. 497.

[39] Shufeldt v. Boehm, 96 Ill. 560; Horner v. Zimmerman, 45 Ill. 14; Phelps v. Foster, 18 Ill. 309. Land was conveyed by an absolute deed and the grantee agreed to support the grantor during his life, bury him at his death, and pay a portion of the remainder to another as directed, and retain the balance discharged of the trust. The land was mortgaged subsequently and a release of the declaration of trust executed by the grantor and on a threatened levy of an execution by a creditor it was held that a bill to enjoin the levy would not lie for the reason that the grantee took a vested interest. It being such an interest as could be alienated was subject to levy. Stevens v. Mulligan, 167 Mass. 84; Blanchard v. Blanchard, 1 Allen 223; Whipple v. Fairchild, 139 Mass. 262; Bancroft v. Fitch, 164 Mass. 401.

debtor until he has obtained a judgment or lien on his property.[40]

§ 28. **Good Faith Required.**—A court of equity requires in all cases the utmost good faith on the part of all parties to the proceeding, and where it appears that a debtor has caused his property to be conveyed to a third person on account of judgments against him, and then procures suits to be brought thereon in the name of such third person, but in reality for his own benefit, a court of equity will not sustain the bill and thus enable the debtor to do indirectly that which he could not do directly.[41]

§ 29. **Creditors' Remedies Against Insolvent Corporations.**— (a) It has become the settled law of this country that the assets of an insolvent corporation constitute a trust fund for the payment of its debts, and the law will not permit a division thereof among its

[40] High on Receivers Sec. 406. Where the following cases are cited in support of the principle: Uhl v. Dillon, 10 Md. 500; Bloodheim v. Moore, 11 Md. 365; Nusbaum v. Stein, 12 Md. 315; Rich v. Levy, 16 Md. 74; Hulse v. Wright, Wright 61; McGoldrick v. Sleven, 43 Ind. 522; Bayaud v. Fellows, 28 Barb. 451; May v. Greenhill, 80 Ind. 124; Adee v. Bigler, 81 N. Y. 349; Smith v. Superior Court, 97 Cal. 348; Johnson v. Farnum, 56 Ga. 144; Dodge v. Pyrolusite M. Co., 69 Ga. 665; Wiggins' v. Armstrong, 2 Johns. Ch. 144; Holdrege v. Gwynne, 3 C. E. Green 26; Young v. Frier, 1 Stockt. 465; Phelps v. Foster, 18 Ill. 309; Byelow v. Andress, 31 Ill. 322; Rhodes v. Cousins, 6 Rand. 188. And see, also, Smith on Receiverships p. 238, where the following additional cases are cited: Cates v. Allen, 149 U. S. 451; Scott v. Neeley, 140 U. S. 106; Swan L. & C. Co. v. Frank, 148 U. S. 603; Morrow Shoe Mfg. Co. v. New England Shoe Co., 57 Fed. Rep. 685, 60 Fed. Rep. 341; United States v. Ingate, 48 Fed. Rep. 251; Tell Guano Co. v. Heatherly, 38 W. Va. 409; National T. W. Co. v. Ballou, 146 U. S. 517; Hollins v. Brierfield, C. & I. Co., 150 U. S. 371; Adler v. Fenton, 65 U. S. 407 (24 How.); Smith v. Ft. Scott H. & W. R. Co., 99 U. S. 398; Day v. Washburn, 65 U. S. 352 (24 How.); Scripps v. King, 103 Ill. 469; Newman v. Willetts, 52 Ill. 98; Greenway v. Thomas, 14 Ill. 271; Getzler v. Saroni, 18 Ill. 511; Ishmael v. Parker, 13 Ill. 324; Clark v. Raymond, 84 Ia. 251; San Antonio & G. S. R. Co. v. Davis, 2 Am. & Eng. Corp. Cas. N. S. 374. The statute sometimes changes the rule; Chamberlain v. O'Brien, 46 Minn. 80; Regenstein v. Pearlstein, 30 S. C. 192; Meinhard v. Strickland, 29 S. C. 491; Pelzer v. Hughes, 27 S. C. 408.

[41] Anderson's assignees v. Tuttle, 26 N. J. Eq. 144.

stockholders, and holds those who are indebted to it on account of unpaid stock subscriptions to a strict accountability, until its debts are paid. A creditor's remedy, by creditor's bill, or proceeding in the nature of a creditor's bill, against the corporation, its officers and stockholders, is firmly established.

(b) In many states the statutes have, by cumulative remedies, undertaken to establish more expeditious and informal methods of reaching the property and effects of corporations and applying them to the payment of their debts, even extending the right of action to general creditors, and applying such drastic remedies as the forfeiture of their franchises and winding up their affairs. Owing to the rapid growth of corporations in the last few decades, and the great power of accumulated capital, it is possible, and even probable, that the legislative will in the regard just mentioned has sometimes approached dangerously near the line of practical confiscation, and particularly so where arbitrary grounds, other than insolvency, have been made the basis of judicial action and sequestration through receiverships. On the other hand, sometimes corporate officers, and others, from unjustifiable motives, have seized upon these legislative conditions and used them as pretexts for the temporary, and even permanent, suspension of corporate functions, to the great detriment of stockholders and creditors alike. While courts are sometimes apparently slow and conservative in adjusting new remedies to new conditions, it would seem that the doctrine of *civilitas mortuus* should be sparingly applied to corporations on any other ground that actual insolvency clearly and judicially determined.

(c) A judgment creditor, after execution returned unsatisfied, may file a creditors' bill, in behalf of himself and all other creditors, against the corporation and its

stockholders, or such of them as he sees proper to make parties, for the recovery of unpaid stock.[42]

(d) All objections to want of parties must be made in apt time by demurrer, or by answer, or some other method conformable to the practice of the court.[43]

Generally all stockholders should be made parties, or an allegation made as to why they are not such, as insolvency or non-residence.[44]

(e) A court of equity, in a proceeding against an insolvent corporation and its stockholders for the purpose of reaching unpaid subscriptions, has ample power, usually acting through a receiver, to order an accounting and an assessment against the stockholders, and enforce the same.[45]

(f) Of course, the necessity of the assessment in order to meet the demands of creditors must appear;[46] and the amount to be collected is limited to the deficiency of assets, including costs and expenses.[47]

(g) The general rule is that the right of action to recover unpaid subscriptions passes to the receiver usually appointed in such cases, who enforces the liability under the order and direction of the court;[48] but this

[42] Bronson v. Wilmington etc. Ins. Co., 85 N. C. 411; Thompson v. Reno Sav. Bk., 19 Nev. 103; Ballin v. Loeb, 78 Wis. 404; Tunesma v. Schuttler, 114 Ill. 156; Arthur v. Willius, 44 Minn. 409; Miers v. Zanesville Co., 11 Ohio 273; Irons v. Manufacturer's Nat. Bk., 17 Fed. Rep. 308.

[43] Luck v. Tredway, 45 Mo. App. 507; Essex Co. v. Lawrence etc., 10 Allen 352.

[44] Friend v. Powers, 93 Ala. 114.

[45] Hawkins v. Glenn, 131 U. S. 819; Hatch v. Dana, 101 U. S. 205; Sanger v. Upton, 91 U. S. 56; Upton v. Tribilcock, 91 U. S. 45; Webster v. Upton, 91 U. S. 65; Great Western Tel. Co. v. Gray, 122 Ill. 630; Patterson v. Lynde, 112 Ill. 196; Lamar Ins. Co. v. Moore, 84 Ill. 575; Glenn v. Williams, 60 Md. 93; Crawford v. Rohrer, 59 Md. 599; Dalton, etc. R. Co. v. McDaniel, 56 Ga. 191; Glenn v. Semple, 80 Ala. 159; Lewis v. Glenn, 84 Va. 947; Thompson v. Reno Sav. Bk., 19 Nev. 242.

[46] Bell's Appeal, 115 Pa. St. 88.

[47] Scovill v. Thayer, 105 U. S. 143; Munger v. Jacobson, 99 U. S. 349; Godfrey v. Terry, 97 U. S. 171.

[48] Showalter v. Laredo Imp. Co., 83 Tex. 162; Vanderwerker v. Glenn, 85 Va. 9; Howard v. Glenn, 85 Ga. 238; Mean's Appeal, 85 Pa. St. 75; Minnesota

right does not extend to the statutory liability of stockholders or directors.[49]

(h) The weight of authority is that the filing of a creditor's bill against an insolvent corporation does not give the plaintiff priority over other creditors.[50]

The rule is not uniform, however,[51] but applies where the proceeding is to wind up a corporation through the instrumentality of a receivership.[52]

(i) The dissolution of a corporation having taken place, a court of equity will assume jurisdiction of its assets and distribute them, first to the creditors and second to the stockholders.[53]

(j) Where the property of an insolvent corporation is in the hands of a trustee, for the benefit of creditors, the latter may maintain a bill for the proper administration of the trust.[54]

(k) As in other cases, except where otherwise provided by statute, the creditor bringing suit must be a judgment creditor.[55]

Thresher, etc., Co. v. Langdon, 44 Minn. 37; Merchants' Nat. Bk. v. Northwestern, etc., Co., 48 Minn. 361.

[49] Dutcher v. Marine Nat. Bk., 12 Blatchf. 435; Bristol v. Sanford, 12 Blatchf. 341; Jacobson v. Allen, 20 Blatchf. 525. These cases were based upon the right of action by assignees in bankruptcy but the principle applies to receivers.

[50] Wright v. McCormack, 17 Ohio St. 86; Umsted v. Buskirk, 17 Ohio St. 113; Briggs v. Penniman, 8 Cow. 387; Cole v. Butler, 43 Me. 401; Ingalls v. Cole, 47 Me. 530; Wells v. Robb, 43 Kan. 201.

[51] Marsh v. Burroughs, 1 Woods 463; Chicago v. Hall, 103 Ill. 342; Gutch v. Fitch, 34 Fed. Rep. 566.

[52] Rankine v. Elliott, 16 N. Y. 377. (Stat.)

[53] Life Association v. Fassett, 102 Ill. 315; St. Louis, etc., Co. v. Sandoval, etc., Co., 116 Ill. 170; Hill v. Fogg, 41 Mo. 563.

[54] People v. Ridgley, 21 Ill. 65.

[55] Consolidated Tankline Co. v. Kansas City, etc., Co., 45 Fed. Rep. 7; Swan Lake, etc., Co. v. Frank, 39 Fed. Rep. 456; Van Weel v. Winston, 115 U. S. 228; Remington v. Samana Bay Co., 140 Mass. 394; Jones v. Green, 1 Wall. 330. For a full and exhaustive treatment of the subject matter of this section and a full citation of cases see Thompson's Commentaries on the Law of Private Corporations, Secs. 3518-3545, 3770-1, 3835-6-8-9, Vol. III.; Secs. 6555, 6571, 6839, 6840, to which indebtedness is acknowledged.

CHAPTER II.

JURISDICTION.

§ 35. Jurisdiction defined—Of person and subject matter.
36. Jurisdiction—Territorial.
37. Jurisdiction—Statutory.
38. General rule—Residence of the grantee.
39. Coordinate Jurisdiction in Law and Equity.
40. Jurisdiction of United States circuit court.
41. Jurisdiction—Basis of, under creditors' bills.
42. Jurisdictional facts to be alleged.
43. Jurisdiction as between courts.
44. Exhaustion of legal remedies not alone sufficient.
45. Equitable jurisdiction in case of fraud, general.
46. Jurisdiction for one purpose jurisdiction for all.
47. Concurrent jurisdiction—Fraudulent conveyances.
48. Equity jurisdiction—Advantages of.
49. Equity jurisdiction—Scope of.
50. Legal remedy must be exhausted.
51. Jurisdiction to reach fraudulent incumbrance in another county.

Section **35. Jurisdiction Defined.** — Jurisdiction, as used in this connection, has reference to the territorial power of the court with reference to the enforcement of its orders and decrees, or with reference to the parties to the suit or proceeding, or with reference to the subject matter of the litigation, or with reference to the court in which the suit is brought or is pending. It is the power of a court, or judge, to entertain an action, petition or proceeding. This includes the making of all necessary orders for relief. Jurisdiction of the person is when the citizen acted upon is before the judge either constructively or in fact, by reason of the service upon him of some process known to the law, and which has been duly issued and executed. Jurisdiction of the sub-

ject matter is the power to inquire and adjudge whether the facts of each particular case make that case a part or an instance of the general thing. In other words, it is a power to adjudge concerning the general question involved therein, and is not dependent upon the state of facts which may appear in a particular case, or the ultimate existence of a good cause of action in the plaintiff therein.[1]

§ **36. Territorial Jurisdiction.**—In this country it is an elementary principle of universal recognition that the courts of one state can have no extraterritorial power, and their judgments and decrees have no force beyond the limits of the state of their creation. The potency of a decree is necessarily limited, both to the person and property of the defendant, within the territorial limits of the state in which the decree is rendered.[2]

[1] Rapalje & Lawrence's Dictionary, p. 702; In re Metzger, 5 How. 176, 186; Lange v. Benedict, 73 N. Y. 12, 27; Hunt v. Hunt, 72 N. Y. 217. Mr. Justice Folger said in this case: "It is the power to act upon the general, and so to speak, upon the abstract question, and to determine and adjudge whether the particular facts presented call for the exercise of the abstract power."

[2] Mr. Justice Mulkey in Johnson v. Gibson, 116 Ill. 294, says: "Courts of equity are concerned chiefly with property rights, and when exercising this jurisdiction, unaffected by statutory legislation, they act either directly upon the property involved in the litigation or upon the person having possession or control of it, depending upon the nature of the case or the character of the relief sought. When the former course is to be pursued it is essential to the power of the court to act that the property to be effected be within the territorial jurisdiction of the court. This is not only true with respect to real property but it is equally true of personal property. A court of equity, for instance, has no more power to lay hold of a trust fund in another jurisdiction, and administer it through the instrumentality of a receiver or trustee, than it has to entertain a bill for the partition of land lying in a foreign jurisdiction, which, all concede, cannot be done. Nor can a court of equity make any order or decree that will, by its own inherent force, divest one person and clothe another with the title to land in another county, except in cases expressly provided for by the statute. Yet, while this is so, it is equally well settled that where one is the owner of land or other property in a foreign jurisdiction, which in equity and good conscience he ought to convey to another, the latter may sue him in equity in any jurisdiction in which he may be found, and compel him to convey

If, however, the court has jurisdiction of the *res*, it may, under certain restrictions and limitations, bind the defendant, though personally he may be beyond the jurisdiction of the court. This principle must, *ex necessitate*, be true, for otherwise a large portion of the property in every state would be entirely beyond remedial action and governmental control. Moreover, when a non-resident becomes the owner of property by purchase, or otherwise, in a foreign state, he, by implication, submits such property to the reasonable and just regulations of the state or jurisdiction where it has its *situs*, among which is the power of the local courts, under constitutional restrictions and limitation, to enforce all reasonable and proper decrees in relation thereto.

On the other hand, if the courts have jurisdiction over the person of the defendant, they may, by decretal process, enforceable against the person, compel the performance of such acts and things touching property, real or personal, located in another state or territory, as shall appear to be equitable and just. If both of the principles here enunciated were not true, the judicial power in this country would be *pro tanto* impotent, and the sovereign power of the government, at least in its remedial functions, would be a misnomer.[3]

the property. The decree in such case directing a conveyance of the property does not directly affect the title of the property, yet the enforcement of it does result in the complete change of the title. So if a failing debtor makes fraudulent conveyances of his real estate for the purpose of hindering and delaying his creditors, the latter may maintain a bill in equity in any jurisdiction where the debtor and fraudulent vendee may be found, for the purpose of having them declared void as to the complaining creditor. In such cases the court does not act upon the land, or make any order in reference to it. It simply declares a certain transaction relating to the land fraudulent as between the complainant and the offending parties, and thus removes it as an obstruction to the creditor's legal remedy."

[3] The courts of England since an early day have held that in matters of trust, relating to property in a foreign country jurisdiction will be exercised: Arglasse v. Muschamp, 1 Vern. 75; Arglasse v. Muschamp, 1 Vern. 237; Langford v. Langford,

5 L. J. Ch. (N. S.) 60; Earl of Kildare v. Eustace, 1 Vern. 419; and where waste is committed by a tenant in common upon land in a foreign jurisdiction. Carteret v. Petty, 2 Swanst 323n; 2 Ch. Cas. 214; Cf. Foster v. Vassall, 3 Atk. 589; Jackson v. Petrie, 10 Ves. 164; And the court may restrain a person from proceeding in other courts out of the jurisdiction. The Carrow Iron Co. v. Maclaren, 5 H. L. Cas. 416. And so where a bill was filed to foreclose a mortgage. Toller v. Carteret, 2 Vern. 494; and for specific performancy; Penn v. Lord Baltimore, 1 Ves. Sr. 444. In this case Lord Hardwicke held that the court had jurisdiction and that the difficulty that might arise in enforcing the decree was no objection to the jurisdiction. Citing Earl of Derby v. Duke of Athol, 1 Ves. Sr. 202; Lord Cranstown v. Johnston, 3 Ves. Jr. 170; Lord Portarlington v. Soulby, 3 M. & K. 104. The same doctrine has been held in this country. Massie v. Watts, 6 Cranch. 148. In this case C. J. Marshall says: "Where the defendant in the action is liable to the plaintiff either in consequence of contract, or as trustee, or as the holder of a legal title acquired by any species of mala fides practiced on the plaintiff the principles of equity give a court jurisdiction wherever the person may be found; and the circumstance that a question of title may be involved in the inquiry and may even constitute the essential point on which the case depends does not seem sufficient to arrest jurisdiction." And see too the same effect, McDowell v. Read, 3 La. Ann. 391; Farley v. Shippen, 1 Wythe 254; Guerrant v. Fowler, 1 H. & M. 5; Hughes v. Hall, 5 Munf. 431; Dale v. Roosevelt, 5 Johns. Ch. 174; Ward v. Arredondo, Hopk. Ch. 213; Mead v. Merritt, 2 Paige 403; Mitchell v. Bunch, 2 Paige 606; Sutphen v. Fowler, 9 Paige 280; Shattuck v. Cassidy, 3 Edw. Ch. 152; DeKlyn v. Watkins, 3 Sandf. Ch. 185; Newton v. Bronson, 3 Kern. 587; Vail v. Knapp, 49 Barb. 299; D'Ivernois v. Leavitt, 23 Barb. 63; Great Falls Mfg. Co. v. Worster, 23 N. H. 462; Paschal v. Acklin, 27 Tex. 173; Langford v. Langford, 8 L. J. (N. S.) Ch. 60; Chaffee v. Quidnick Co., 13 R. J. 442; Dehon v. Foster, 4 Allen 545; Vermont R. Co. v. Vermont R. Co., 46 Vt. 792; Dinsmore v. Neresheimer, 32 How. 204. Without regard to the situation of the subject matter, courts of equity consider the equity between the parties and decree in personam according to those equities, and enforce obedience to their decrees by process in personam. Phelps v. McDonald, 99 U. S. 298. Courts of equity have full power over persons within their jurisdiction, and amenable to their process, to restrain them from proceeding either within or without the state to do acts which are wrongful toward other residents and therefore contrary to equity and good conscience. Sercomb v. Catlin, 128 Ill. 556; Richards v. People, 81 Ill. 551; Alexander v. Tolleston Club, 110 Ill. 65; Patterson v. Lynde, 112 Ill. 196; Keyser v. Rice, 47 Md. 203; Engel v. Scheuerman, 40 Ga. 206; Claflin v. Hamlin, 62 How. Pr. 284; Snook v. Snetzer, 25 Ohio St. 516; Cole v. Young, 24 Kas. 435; Phelps v. McDonald, 99 U. S. 298; Miller v. Sherry, 2 Wall. 237. The power of a court of equity in a creditor's suit to compel a judgment debtor to convey lands located in another state for the benefit of his creditors is based on the same principles as stated in the text. Bailey v. Ryder, 10 N. Y. 363; Mitchell v. Bunch, 2 Paige 606; Johnson v. Gibson, 116 Ill. 294; Cf. Rose v. Choteau, 11 Ill. 167; Hutchinson v. Howe, 100 Ill. 11; Conkey v. Knight, 104 Ill. 337; Sawyer v. Moyer, 105 Ill. 192; Illinois Furnace Co. v. Vinnedge,

§ 37. Statutory Jurisdiction.—In many of the states there are constitutional and statutory provisions which, to a greater or less extent, regulate the jurisdiction of the several courts, and particularly with reference to creditors' bills, bills in the nature of creditors' bills, and supplementary proceedings. These constitutional and statutory jurisdictional regulations are not, in this work, entered upon, except incidentally, as explaining some leading case of more than local interest.[4]

106 Ill. 650; Enos v. Hunter, 4 Gilm. 211. And see a full collection of cases on this subject in note to Penn v. Lord Baltimore, 2 Lead. Cas. in Eq. 1806 (4th Am. Ed. from 4th London Ed.), where as a conclusion from a careful examination of English and American cases the following general principles are stated: The result of the cases as a whole, would seem to be that, as the right of real property is essentially local and can only be enforced by a recourse to the local tribunals, equity will follow the law, and refuse to assume a power which might further the purposes of justice in particular instances, but would ultimately disturb the comity which ought to exist between the courts of different nations, by bringing the decisions of foreign tribunals into conflict with those of the locus rei sitae; The Northern Indiana R. R. Co. v. The Michigan Central R. R. Co., 15 Howard 233; Watts v. Waddle, 6 Peters 389, 400; Story's Eq. Juris. Sec. 744a; Story on Conflict of Laws, Secs. 463, 543. But rights growing out of trust or contract, or founded upon a fraudulent violation of the principles of equity as between man and man, are purely personal and will consequently be upheld and enforced both by law and equity whenever jurisdiction has been acquired over the parties, without regard to the nature or situation of the property in which the controversy has its origin and even when the relief sought consists in a decree for the conveyance of land which lies beyond the control of the court and can only be reached through the exercise of its powers over the person. The power of chancery to restrain a defendant from instituting legal proceedings, obviously extends to the prohibition of suits beyond its jurisdiction, in order to prevent an evasive recourse to the tribunals of other states or territories; Pearce v. Olney, 20 Conn. 544; Dehon v. Foster, 4 Allen 545. The doctrines relating to this branch of the subject have been fully considered, ante, notes to The Earl of Oxford's Case, 1316-1318, 1396-1401.

[4] The constitutional provisions regarding actions for the enforcement of liens upon real estate, to be commenced in the county where the real estate is situated, do not apply to an action in the nature of a creditor's bill, brought to set aside a conveyance by a judgment debtor. Beach v. Hodgdom, 66 Cal. 187. A creditor's bill, under the creditor's act of Michigan, to reach property which cannot be found under execution issued upon a judgment at law, is a continuation of the suit at law; and no change of residence of the parties since the commencement of such suit, can affect the juris-

§ 38. General Rule—Residence of Grantee.—In the absence of statutory regulation, the general rule in regard to jurisdiction in matters of fraudulent conveyance is that the bill may be maintained in any jurisdiction where the debtor and fraudulent vendee may be found. The reason for this rule is that in such case the court does not act directly upon the land itself, but declares the transaction void as to the creditor, and thus removes the obstruction to the legal remedy. The proceeding is personal in its nature, but is *in rem* in its effects.

§ 39. Co-ordinate Jurisdiction in Law and Equity.—The jurisdiction to reach property which has been fraudulently conveyed and apply the same in satisfaction of the plaintiff's debt, where the fraudulently conveyed property is still in the hands of the grantee, is either at law or in chancery, and each jurisdiction is coördinate. Thus the land alleged to have been fraudulently conveyed may be levied on under the execution and sold, and a deed taken under the sale, and ejectment brought to recover from the grantee, and thus avoid the conveyance as fraudulent. If this course is not taken and there are objections to the course, as noticed

diction of the court. Hatch v. Dorr, 4 McLean, 112. By Statute (1851, Ch. 206) the Massachusetts supreme court had jurisdiction to compel the application of property in payment of a debt which is not of a nature to be attached at law. Silloway v. Columbia Ins. Co., 8 Gray (Mass.) 199. A judgment creditor by statute (Hutch. Code, 904, Sec. 27), seeking to subject property fraudulently conveyed to his execution, by scire facias, does not exclude the jurisdiction of a court of equity to set aside the fraudulent conveyances. Abbey v. Commercial Bank of New Orleans, 31 Miss. 434. The jurisdiction of a court of equity under the laws of 1845 and 1864 (N. J.) to subject the choses in action of a debtor to the payment of a judgment is exercised in behalf of the creditor who makes the application alone and not creditor's generally. Whitney v. Robbins, 17 N. J. Eq. 360. In New York the court has no jurisdiction of an action in the nature of a creditor's bill, where the amount of plaintiff's judgment is less than $100; and the complaint must be dismissed. Neither the code nor the constitution has changed the law in this respect. Shephard v. Walker, 7 How. Pr. (N. Y.) 46.

elsewhere,[5] then the ordinary creditor's proceeding may be taken in a court of chancery.

In matters of alienation of personal property by way of pledge, or otherwise, which is in fraud of creditors, courts of equity and courts of law have concurrent jurisdiction.

In most cases where there is concurrent jurisdiction at law and in equity for the same cause of action, if the legal remedy has been barred by lapse of time, the equitable remedy will be also.[6]

A court of equity will not exercise jurisdiction where a defense at law has been made and such defense has failed. In such case it is *res adjudicata.*[7]

But where a sale of the alleged fraudulently conveyed premises is made under the judgment and execution, and a deed is taken to the premises under such sale, a resort to ejectment is not compulsory, for in that case a bill in equity may be filed by the purchaser at the execution sale for the purpose of removing the fraudulent deed as a cloud upon the title.

In all such cases, in order to enable a court of equity

[5] A judgment creditor, where the debtor's lands have been conveyed to defraud creditors, may disregard the fraudulent conveyance, while the lands remain in the hands of a fraudulent grantee, and levy on the same and sell and the purchaser bring ejectment, and, at law, avoid the fraudulent conveyance. Brown v. Niles, 16 Ill. 385. In Pennsylvania, in ordinary cases of fraudulent conveyance, the proceeding is not in equity by a creditor's bill, but at law, by obtaining judgment, levying upon the property and selling it at sheriff's sale, and then contesting the title by an action of ejectment. Houseman v. Grossman, 177 Pa. St. 453. This rule does not apply to a case where the debtor is dead. Id. Fowler's Appeal 87 Pa. 449. The objection that the remedy is at law and not in equity must be raised in limine, either by demurrer or answer and cannot be raised for the first time on appeal. Houseman v. Grossman, supra; Adam's Appeal, 113 Pa. St. 449; Mortland v. Mortland, 151 Pa. St. 593.

[6] Smith's Admr. v. Wood, 42 N. J. Eq. 563; Mulford v. Peterson, 6 Vr. 127, 133. That the bar as to legal remedy is a bar as to equitable remedy see Smith's Admr. v. Wood, supra; Somerset Bk. v. Veghte, 15 Stew. Eq. 39; Kane v. Bloodgood, 7 Johns. Ch. 90; Smith v. Clay, 2 Amb. 645, S. C. 3 Bro. C. C. 693 note.

[7] Garvin v. Squires, 9 Ark. 533.

to exercise its jurisdiction, it must appear (1) that the debt is clear and undisputed, and (2), some special circumstances, requiring the interposition of the court, either to obtain possession of the property, or apply it, must appear.[8]

While it is not without interest locally it is not intended to enter into an examination of jurisdiction in creditors' bills conferred by statute, it may be stated, in general terms, that, where the proceeding is in equity, the proper court in which the proceedings are to be taken is that court usually exercising general chancery jurisdiction designated by constitutional or legislative authority. In most states the constitution itself prescribes the jurisdiction to be exercised by the several courts which form the judiciary department, or delegates the power to the legislature so to do.

§ **40. Jurisdiction of United States Courts.**—The United States circuit court, except where citizenship is an obstacle, has jurisdiction in all classes of creditors' suits under the rules and practice of that court.[9]

[8] Conveyances in fraud of creditors are under the statute absolutely void as to such creditors, and a creditor may levy on the land, sell the same and procure a sheriff's deed, and then file a bill in equity and have the fraudulent deed set aside as a cloud on his title. Gould v. Steinburg, 84 Ill. 170.

[9] The United States circuit court has jurisdiction to entertain a creditor's bill. Suydam v. Beals, 4 McLean 12; Lannon v. Clark, 4 McLean 18; Wilkinson v. Yale, 6 McLean, 16. This, of course, presupposes the question of citizenship as a basis of jurisdiction being established. United States courts of equity have jurisdiction over executors and administrators where the parties to the suit are citizens of different states and this jurisdiction is not barred by subsequent insolvent proceeding in the state court. Green's Administratrix v. Creighton, 64 U. S. 90. A circuit court of the United States has jurisdiction in equity under a bill filed by a creditor of the estate of a deceased person to set aside for fraud a sale of the real estate of the deceased which was made and confirmed by order of a state court having competent jurisdiction when the inquiry is not into irregularities of the proceedings in the state court but is based upon an actual fraud in obtaining the judgment or decree of sale and confirmation. Johnson v. Waters, 111 U. S. 640. When the creditor's suit is properly removed from a state court to a United States circuit court on the ground of citizenship the

And where a creditor's bill is properly pending in the circuit court, and a receiver has been appointed, who, by ancillary proceedings in the same cause, seeks to recover from debtors of the insolvent corporation defendant indebtedness due, the questions of citizenship and amount involved are not jurisdictional facts.[10]

Where the judgment debtor is estopped by the original judgment, his codefendants cannot defeat the plaintiff in the creditor's bill by alleging that the latter was not the owner of a sufficient amount of the judgment to give the court jurisdiction.[11]

jurisdiction of the latter court is not ousted by admitting in the circuit court as co-plaintiff other creditors who are citizens of the same state as the defendants. Stewart v. Dunham, 115 U. S. 61; Seaver v. Bigelows, 5 Wall. 208; Schwed v. Smith, 106 U. S. 188; Farmer's Loan & Trust Co. v. Waterman, 106 U. S. 265; Adams v. Crittenden, 106 U. S. 576; Hawley v. Fairbanks, 108 U. S. 543; Fourth Nat. Bank v. Stout, 113 U. S. 684. The jurisdiction of a federal court to reach property fraudulently conveyed is not divested by a state statute permitting relief in ejectment. Mississippi Mills v. Cohn, 150 U. S. 202; Payne v. Hook, 74 U. S. 425; McConihay v. Wright, 121 U. S. 201. If bill is brought in a state court, by an assignee in bankruptcy, to set aside a conveyance made by the bankrupt prior to his bankruptcy, in fraud of his creditors, the state courts have concurrent jurisdiction with the national courts. Rison v. Powell, 28 Ark. 427. The jurisdictional amount required is determined by the amount of the judgment and not by the amount of money in the hands of the defendant sought to be reached. Alkire Grocery Co. v. Richesin, 91 Fed. Rep. 79. It is not a fraud on the judgment debtor or the court, for the holders of several judgments to assign them to one of the creditors for the purpose of raising the amount necessary to confer jurisdiction on a federal court. Alkire Grocery Co. v. Richesin, supra.

[10] The circuit court of United States has jurisdiction in a general creditor's suit properly pending therein for the collection, administration and distribution of the assets of an insolvent corporation to hold and determine in an ancillary suit instituted in the same cause by its receiver on the order of the court against the debtors of a corporation so far as in said suit the receiver claims the right to recover from any one debtor an amount though not exceeding $2,000. White v. Ewing, 159 U. S. 36. In such case jurisdiction will be maintained in the ancillary suit regardless of the citizenship of the parties or of the amount in controversy. Freeman v. Howe, 65 U. S. 450; Krippendorf v. Hyde, 110 U. S. 276; Dewey v. West Fairmont Gas-Coal Co., 123 U. S. 329; In re Tyler, 149 U. S. 164; Root v. Woolworth, 150 U. S. 401; Rouse v. Letcher, 156 U. S. 401; Cf. Price v. Abbott, 17 Fed. Rep. 506; Armstrong v. Trautman, 36 Fed. Rep. 275.

[11] Alkire Grocery Co. v. Riche-

§ 41. Jurisdiction, Basis of, Under Creditors' Bills.—As we have already seen, the basis of jurisdiction of a court of equity in ordinary creditor's suits, where there is no legislation upon the subject, is as follows:

There are two classes of cases where equity affords a remedy: (1) Where the issuing of an execution gives a lien upon property but there is an obstruction, fraudulently or inequitably interposed, to prevent a sale. (2) Where the plaintiff seeks to obtain satisfaction of his judgment from property which cannot be reached by execution at law, in which case a return of the execution unsatisfied is necessary, for only by so doing can it be shown that all legal remedy is exhausted.[12]

It is a general rule that, before the aid of a court of equity can be invoked in sustaining a creditor's bill, the ordinary common law remedies must have been exhausted. At least, the usual common law remedies must be inadequate for the enforcement of the rights of creditors against the property of the debtor.

Inadequacy of the common law remedies, as used in this connection, does not mean a failure on the part of the plaintiff in a suit at law to realize the money due him, but means that the nature and character of those remedies are such that they are not fitted or adapted to the end in view under the peculiar circumstances disclosed by the bill.[13]

The plaintiff must have exhausted fully and completely the remedies afforded him under the common law process, and with proper diligence. It is not sufficient

sin (C. C. W. D. Ark.) 91 Fed. Rep. 79.

12 Beck v. Burdett, 1 Paige 305.

13 Thompson v. Allen County, 115 U. S. 550; Jones v. Green, 68 U. S. 330. A court of equity will not lend its aid when there is an adequate remedy at law. It must therefore appear in the creditor's bill that the court of law is incompetent to reach the property of the defendant in execution either by reason of its peculiar character or by reason of its inability to discover it. Durand v. Gray, 129 Ill. 9.

that he shall have used the common law writ as a mere formality, and thus base an equitable action on a mere apparent ineffectual common law proceeding.[14]

§ **42. Jurisdictional Facts to be Alleged.**—It has been held that where the purpose of a creditor's bill is to remove a fraudulent conveyance out of the way of an execution, it is necessary that the bill shall show that the judgment was an existing lien on the property conveyed. Thus, if it does not show the issuance of an execution within a year after the rendition of the judgment, the bill will not be maintained.

This is based on the ground that the equitable title, at least so far as the creditor is concerned, remains in the grantor, and the legal title, by the decree, becomes reinvested in him, and the lien is then enforced. In all cases where by law an execution must issue within a statutory period in order to preserve a lien, an averment in regard thereto would seem to be required. At any rate, the judgment should be shown to be an existing lien when the bill is filed.[15]

Another prerequisite to the filing of a creditor's bill, and as a basis thereof, is that the plaintiff must have reduced his claim to a judgment, and that jurisdiction, as a rule, will not be exercised in behalf of a general creditor.[16]

[14] Scripps v. King, 103 Ill. 469; Van Sycle v. Richardson, 13 Ill. 174; Bay v. Cook, 31 Ill. 336; Armstrong v. Cooper, 11 Ill. 560; McDowell v. Cochran, 11 Ill. 31; Smyth v. New Orleans C. & B. Co., 141 U. S. 656; National Mechanics B. A. v. Mariposa Co., 60 Barb. 423; Gould v. Tryon, Walk. Chy. 353; Fogarty v. Burke, 2 Drury & Warren, 580.

[15] Wisconsin Granite Co. v. Gerrity, 144 Ill. 77; Durand v. Gray, 129 Ill. 9; Weis v. Tiernan, 91 Ill. 27; Newman v. Willetts, 52 Ill. 98; Bay v. Cook, 31 Ill. 336; Weightman v. Hatch, 17 Ill. 281; Greenway v. Thomas, 14 Ill. 271.

[16] Scripps v. King, 103 Ill. 469; Newman v. Willetts, 52 Ill. 98; Bigelow v. Andress, 31 Ill. 322; Getzler v. Saroni, 18 Ill. 511; Greenway v. Thomas, 14 Ill. 271; Ishmael v. Parker, 13 Ill. 324; Scott v. Neeley, 140 U. S. 106; Swan Land Co. v. Frank, 148 U. S. 603; National T. Wks. v. Ballou, 146 U. S. 517; Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371; Cates v. Allen, 149 U. S. 451; Smith v. Ft. Scott, etc., R.

The reasons usually given for this rule are (1) that the lien of the judgment upon the property sought to be reached constitutes a basis for the interposition of a court of equity in the removal of the obstruction, or (2) that, independent of any question of lien, the fraudulent nature of the transaction is a sufficient basis for equitable jurisdiction, the judgment in such case being evidence of the exhaustion of legal remedies.

A creditor's bill will not be sustained in the absence of evidence tending to show that the debtor has property or assets that cannot be reached by execution, or which is covered up and kept out of the reach of creditors, or where it appears that the debtor has turned over property, real and personal, to creditors, of sufficient value to satisfy the debt, before filing the bill.[17]

§ **43. Jurisdiction as Between Courts.**—In the exercise of jurisdiction as between two courts of competent power and authority, the same principles govern here as in other matters of coördinate jurisdiction. Thus, where an estate is in the hands of a probate court for administration, a court of equity will not take to itself the administration of such estate on the application of creditors, except perhaps in connection with fraud. Where, however, there is an equitable fund that should be applied to the payment of all or a portion of the debts, which cannot be reached by an executor or an administrator, then equity, at the instance of creditors entitled to participate in the fund, will seize upon it and apply it to those equitably entitled to it.[18]

So also, where an insolvent member of an insolvent

Co., 99 U. S. 398; Smith v. Los Angeles Co. Sup. Ct. 97 Cal. 348; Clark v. Raymond, 84 Ia. 251; May v. Greenhill, 80 Ind. 124; McGoldrick v. Slevin, 43 Ind. 522.

[17] Preston v. Colby, 117 Ill. 477.

[18] Reinhardt v. Gartrell, 33 Ark. 727. Equity will not on the application of creditors withdraw the administration of an estate from the probate court. White v. Russell, 79 Ill. 155; LeMoyne v. Quimby, 70 Ill. 399.

firm appropriated means of the firm and purchased real estate therewith, and to defraud, hinder and delay creditors, had the title conveyed to his wife, and then died, a bill may be filed by the surviving partner to set aside the conveyance and apply the proceeds to the payment of a debt due the firm and an individual debt due the survivor, having first had the claim allowed in the probate court.[19]

§ 44. Exhaustion of Legal Remedies not Alone Sufficient.—The basis for the jurisdiction of a court of equity in proceedings of the nature under consideration is placed upon several grounds and is not confined to that of an exhaustion of legal remedies. It is true that the exhaustion of legal remedies is a condition precedent to the exercise of jurisdiction by a court of equity, but in addition to that there must be some element of jurisdiction peculiar to such courts and for which equitable relief is applicable. The debtor must have made some fraudulent disposition of his property to the injury of the creditor, or the case must stand infected with some trust, collusion or injustice, against which it is the province of the court to grant relief.[20]

[19] White v. Russell, 79 Ill. 155; McDowell v. Cochran, 11 Ill. 31; Bay v. Cook, 31 Ill. 336; LeMoyne v. Quimby, 70 Ill. 399, distinguished. And if it appears that the plaintiff is insolvent on the application of the administrator the court may direct that the money arising from the sale of the real estate shall be paid directly to the firm creditors. White v. Russell, supra.

[20] Disborough v. Outcault, 1 N. J. Eq. 298. Where a bill supplimentary to execution is filed, a court of chancery obtains jurisdiction on the ground of fraud. U. S. Ins. Co. v. Central N. Bk., 7 Ill. App. 426. Where a creditor's bill is filed, based on the fraud of the creditor before an assignment, the chancery court has jurisdiction. Colburn v. Shay, 17 Ill. App. 289. The basis of the jurisdiction of a court of equity is not that of a lien or charge arising by virtue of a judgment, but an equity to enforce satisfaction of the judgment by means of an equitable execution. Pierstoff v. Jorges, 86 Wis. 128; Friedmons, etc., Co. v. Earle, 110 U. S. 710. A court of equity will not exercise its jurisdiction to reach the property of the debtor applicable to the payment of his debts unless the debt be clear and undisputed and there exist some special circumstances requiring the interposition of the court to obtain pos-

§ **45. Equitable Jurisdiction in Case of Fraud General.** — A court of equity does not restrict its remedial processes to the aid of the helpless and ignorant, but embraces within its view the general claims included within what are called *quasi* trusts, and intervenes to prevent violations of equitable duty by whomsoever committed or whoever may suffer from the violation. It goes altogether outside of trust relations in many cases to prevent fraud, or compel a restoration of property obtained by fraud, as where there have been fraudulent transfers of real or personal property made in fraud of creditors. This jurisdiction is beneficially invoked in cases of private fraud to rescind transfers of real estate procured by fraudulent representations and to restore to the defrauded vendor the title of which he has been defrauded.[21]

While one of the most common subjects of jurisdictions in equity is that in relation to the establishment of trusts, yet equity will not enforce a trust growing out of a conveyance to defraud creditors.[22]

§ **46. Jurisdiction for One Purpose Jurisdiction for All.** — When a court of chancery has taken jurisdiction for one purpose it may properly retain jurisdiction until the whole subject matter of controversy has been disposed of and the rights and remedies of all parties completely adjusted.[23]

And, when jurisdiction is taken, the court will administer the assets upon the principle that equality is equity, and will distribute the assets ratably among all the

session of and apply the property. Board of Public Works v. Columbia College, 84 U. S. 521.

[21] American Sugar R. Co. v. Fancher, 145 N. Y. 552.

[22] Where the primary object of a bill is to establish a trust and to remove the fund beyond the reach of abuse, is a common branch of equity jurisdiction. Miller v. Davidson, 3 Gilm. 518. A court of equity will not enforce a trust growing out of the conveyance made to defraud creditors. McElroy v. Hiner, 133 Ill. 156.

[23] Dugan v. Cureton, 1 Ark. 31.

creditors, having due regard to the legal rights and preferences of any existing at the time.[24]

Where a creditor's bill is filed by a particular creditor to force the collection of his own judgment, and not in behalf of creditors generally, the court has jurisdiction of the equitable assets of the judgment debtor for that particular purpose, and it does not involve necessarily a final distribution of the assets among all creditors. But in such case the custody of the fund presents no obstacle to another creditor obtaining a lien subordinate to that of the complainant in the bill filed.[25]

§ **47. Concurrent Jurisdiction in Cases of Fraudulent Conveyances, etc.**—Courts of law and courts of chancery have concurrent jurisdiction in matters of fraud committed in the conveyance of real estate. While the rule cannot be said to be universal, yet the weight of authority would seem to be that where the debtor has fraudulently conveyed his real estate for the purpose of hindering, delaying and defrauding his creditors, the latter have two courses, either of which may be pursued. A creditor having obtained judgment, may levy execution upon the property, sell the same, and, when his title is perfected, he may bring ejectment and have the question of fraud determined,[26] or, having execution issued on his judgment, he may thereafter, before or after levy, file his bill, in the nature of a creditor's bill, and procure a removal of the obstruction out of the way of his judgment and execution, and then proceed with

[24] Blair v. Illinois Steel Co., 159 Ill. 350; Atwater v. American Exchange N. Bk., 152 Ill. 605; Butler Paper Co. v. Robbins, 151 Ill. 588.

[25] Russell v. Chi. Trust & Savings Bank, 139 Ill. 538.

[26] Mulford v. Peterson, 35 N. J. L., 127. Where courts of law and courts of equity have concurrent jurisdiction and the courts of law are barred by the statute of limitation, the equitable remedy will be also, except under special circumstances. Smith's Admr. v. Wood, 42 N. J. Eq. 563; Somerset Bk. v. Veghte, 42 N. J. Eq. 39; Kane v. Bloodgood, 7 Johns. Ch. 90; Smith v. Clay, 2 Amb., 645.

his judgment and execution, though usually the equity court, on finding the issues for the plaintiff, appropriates the property to the payment of creditors' indebtedness in the same proceeding.[27]

Where there is concurrent jurisdiction in law and in equity, as in the case of proceedings against shareholders of a corporation, the remedy at law does not oust the jurisdiction of courts of equity.[28]

§ **48. Equity Jurisdiction—Advantages of.**—The proceeding in equity is, as a general rule, to be preferred because of the flexible nature of such proceedings. It not infrequently happens that the court may have no doubt of the fraudulent purpose of the grantor, but entertains a well founded doubt as to the participation therein by the grantee, and particularly if he is also a creditor, and in such case will protect the grantee to the extent of the *bona fide* consideration paid and appropriate the surplus proceeds arising from the sale to payment of the plaintiff's demands. Besides the judgment under the common law action must be for or against the plaintiff, its rules of procedure being less flexible, while in chancery its process is plastic and may be readily moulded to suit the equities of the particular case.[29]

The consequences of the failure of the plaintiff to establish fraud in an action of ejectment are also different, in that he emerges from the trial with a satisfied judgment.

Besides it may well be doubted whether, strictly speak-

[27] Scott v. Indianapolis, etc., 48 Ind. 75; Barto's Appeal, 55 Pa. St. 386; Partee v. Matthews, 53 Miss. 140; Gallman v. Perrie, 47 Miss. 131; Tupper v. Thompson, 26 Minn. 385; Henry v. Hinman, 25 Minn. 199.

[28] Potter v. Dear, 95 Cal. 578; Morawetz on Priv. Corp., Sec. 866; Thompson on Stockholders, Sec. 265.

[29] Foster v. Foster, 56 Vt. 540. While fraud must be proved in equity as at law, yet it is frequently a conclusion arrived at from an array of circumstances which might not be admissible as evidence in a common law proceeding. Burt v. Keyes, 1 Flipp. 61.

ing, a common law proceeding by ejectment can be sustained in that large class of cases where the legal title was never at any time in the debtor, as where the property is purchased and paid for by him and the title taken in another's name.[30]

The same difficulty is met in a case where the debtor has purchased land under a contract and, purposely, or on account of non-payment of a portion of the purchase money, has not obtained from the vendor the legal title. Sometimes, however, the statute renders such property liable to execution, levy and sale.

The property and assets of a debtor sometimes is of such nature and character as not to be reached by a common law writ, in which case equity is the only available remedy to be pursued.[31]

§ **49. Equity Jurisdiction—Scope of.**—A court of equity has general jurisdiction to aid a creditor to reach

[30] Dewey v. Long, 25 Vt. 564; Haggerty v. Nixon, 26 N. J. Eq. 42; Mulford v. Peterson, 35 N. J. L. 127; Webster v. Folsom, 58 Me. 230; Low v. Marco, 53 Me. 45; Garfield v. Hatmaker, 15 N. Y. 475; Carlisle v. Tindall, 49 Miss. 229.

[31] Drake v. Rice, 130 Mass. 410; Taylor v. Jones, 2 Atk. 600; King v. Dupine, 2 Atk. 603 (n.); Horn v. Horn, 1 Amb. 79; Ryall v. Rolle, 1 Atk. 165; Partridge v. Gopp, 1 Eden Ch. 163; Bayard v. Hoffman, 4 Johns. Ch. 450; Hadden v. Spader, 20 Johns. 554; Abbott v. Tenney, 18 N. H. 109; Sargent v. Salmond, 27 Me. 539. Whether an equitable interest in real estate is liable to be appropriated by legal process to the judgment for the debts of a beneficiary is to be determined by the law where the property has its situs. Spindle v. Shreve, 111 U. S. 542. Mr. Justice Gray, in Drake v. Rice supra says: "The St. of 13 Eliz. Ch. 5 declared all gifts or conveyances of goods and chattels, as well as of lands and tenements, made in fraud of creditors, to be void as against them. By the law of England before the American Revolution, as established by the decisions of Fortesque, M. R., Lord Hardwicke and Lord Northington, fraudulent conveyances of choses in action, though not specified in the statute, were equally void, but from the nature of the subject the remedy of the creditor must be sought in equity. * * In Cadogan v. Kennett, Cowper 432, decided within two months before the Declaration of Independence, Lord Mansfield said that the statute was but declaratory of the common law as it was before, and could not receive too liberal construction or be too much extended in suppression of fraud. Like views were expressed by Chief Justice Marshall, Hamilton v. Russell, 1 Crouch 309, 316."

the property of his debtor by removing fraudulent judgments or conveyances, or transfers, which defeat his remedy at law.[32]

The ground of jurisdiction is not that of a lien or charge arising by virtue of the judgment itself, but of an equity to enforce satisfaction of the judgment by means of an equitable execution. This it effects by a sale of the debtor's interests and distribution of the proceeds according to the order of equities.[33]

A fraudulent judgment may be set aside.[34]

A fraudulent judgment may be attacked in a garnishment proceedings, where such proceedings, by statute, have the effect of a creditor's bill.[35]

Courts of equity will aid courts of law in the execution of legal rights, but cannot extend those rights. Thus, a court of equity will aid an execution creditor to obtain satisfaction of his demand, but in order to do this there must be some equitable ground presented. The case must be infected with fraud, or involve some trust, or other matter of peculiar equity jurisdiction.[36]

§ 50. Legal Remedy Must be Exhausted.—It is a general principle at the foundation of the law of equitable remedies of creditors that before courts of equity will entertain jurisdiction legal remedies must be exhausted. This is a fundamental doctrine applying to all equitable jurisdictions, but, as is well known, is not

[32] Mississippi Mills v. Cohn, 150 U. S. 202; citing Dockray v. Mason, 48 Me. 178; Edgell v. Haywood, 3 Atk. 352; Burroughs v. Elton, 11 Ves. 29; Hendricks v. Robinson, 2 Johns. Ch. 283; Edmeston v. Lyde, 1 Paige Ch. 637; Beck v. Burdett, 1 Paige Ch. 305; Cuyler v. Moreland, 6 Paige Ch. 273; Feldenheimer v. Tressel, 6 Dak. 265. Where property is placed beyond the reach of judgment creditors by ordinary process of law, a court of equity has jurisdiction. Dunphy v. Kleinsmith, 78 U. S. 610.

[33] Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710; Sharpe v. Earl of Scarborough, 4 Ves. 538.

[34] Sweetser v. Silber, 87 Wis. 102.

[35] Bloodgood v. Meissner, 84 Wis. 452; LaCrosse Nat. Bank v. Wilson, 74 Wis. 391.

[36] Disborough v. Outcalt, 1 N. J. Eq. 298.

applied in certain matters wherein courts of chancery and courts of law exercise concurrent jurisdiction.

It is a necessary prerequisite to the jurisdiction of a court of equity in the matter of creditor's bills, bills in the nature of creditor's bills, and other kindred proceedings, sometimes denominated creditor's suits, that all adequate legal remedies shall have been exhausted.[37]

The doctrine as stated is not limited to the bare fact of excluding all equitable jurisdiction where, under a given state of facts, a court of law would have jurisdiction of the subject matter. The jurisdiction of the common law court, in order to exclude equitable jurisdiction, must be complete and adequate. Jurisdiction in the absence of adequacy and completeness is not a bar.

While the general rule is, as stated, that legal remedies must be exhausted as a prerequisite to equitable proceedings, yet a partial remedy relating to a portion of the property will not divest the court of jurisdiction.[38]

[37] Wales v. Lawrence, 36 N. J. Eq. 207; Robert v. Hodges, 16 N. J. Eq. 299; Brown v. Fuller, 13 N. J. Eq. 271; Swayze v. Swayze, 9 N. J. Eq. 273; Randolph v. Daly, 16 N. J. Eq. 313; Annin v. Annin, 24 N. J. Eq. 184; Bigelow v. Magee, 27 N. J. Eq. 392; Clarkson v. De Peyster, 3 Paige Ch. 320; Cuyler v. Moreland, 6 Paige Ch. 273; Reed v. Wheaton, 7 Paige Ch. 663; Merchants', etc., Bk. v. Griffith, 10 Paige Ch. 519; Jones v. Green, 68 U. S. 330; Knox v. Smith, 45 U. S. 298; Scott v. Neely, 140 U. S. 106; Storms v. Ruggles, Clark's Chy. 148; Manning v. Merritt, Clark's Chy. 98; Crosby v. Lumberman's Bk., Clark's Chy. 234; Weil v. Raymond, 142 Mass. 206; Schlesinger v. Sherman, 127 Mass. 206; Mill River L. T. Asso. v. Claflin, 9 Allen 101; Sale v. McLean, 29 Ark. 612. A creditors' bill cannot be maintained in the Iowa district court on a judgment rendered by a superior court which has not become a lien on real estate, by filing the same in the district court as authorized by Iowa Acts 16th Gen. Assem. Ch. 143, Sec. 18, as amended by Iowa Acts 19th Gen. Assem. Ch. 24, Sec. 8, as the remedy at law has not been exhausted, and a lien on land is a necessary basis for such a bill. Peterson v. Gittings, 77 N. W. 1056. Where a lien on land is a prerequisite to a creditor's bill, and the lien of the judgment in the court rendering the same does not extend to land, the court in which the bill is filed has no jurisdiction. The legal remedies have not been exhausted. Peterson v. Gittings, (Ia.) 77 N. W. 1056.

[38] Anything less than a complete and adequate remedy at law will not bar an equitable proceeding. Gullickson v. Mad-

§ 51. Jurisdiction to Reach Fraudulent Incumbrance in Another County.—The court which rendered judgment has jurisdiction of a creditor's bill to remove a mortgage or deed of trust upon property in another county upon which the execution was levied if there is an obstruction to the execution caused by the mortgage or deed of trust which is fraudulent. The provisions of the constitution requiring actions for the enforcement of liens upon real estate to be commenced in the county in which the real property is situated do not apply to a creditor's bill.[39]

sen, 87 Wis. 19. When accounts and other personal property are transferred to a fraudulent vendee and the accounts are collected and part of the property sold and converted, the bill will be sustained, though some of the property still remains with the vendee and is subject to levy, there being a return of the execution unsatisfied. Pierstoff v. Jorges, 86 Wis. 128; Cf. Peck v. School Dist., 21 Wis. 516; Hebard v. Ashland Co., 55 Wis. 145; Sherry v. Smith, 72 Wis. 339; Crump v. Ingersoll, 47 Minn. 179.

[39] Woodbury v. Nevada Southern R. Co., 120 Cal. 463; Beach v. Hodgdon, 66 Cal. 187.

CHAPTER III.

PARTIES TO THE SUIT.

§ 60. Necessary parties—General principles.
61. All persons in interest must be parties.
62. Where fraudulent conveyance is attacked.
    (a) Grantor and grantee.
    (b) Grantor of fraudulent grantee when not.
    (c) Assignor and assignee in fraudulent assignment.
    (d) Fraudulent grantee in possession.
    (e) Fraudulent grantor when not.
    (f) Grantees in several conveyances.
63. Proceedings against corporations, corporation necessary.
    Proceedings against corporations, stockholders when and when not.
64. Joint judgment debtors and joint debtors.
65. General rule and illustrations of necessary parties.
    (a) Debtor of debtor in accounting.
    (b) Judgment debtor in action between mortgagee and creditor.
    (c) Judgment debtor in contest between creditors.
    (d) Heirs of fraudulent grantor.
    (e) Heirs when, and personal representatives not.
    (f) Heirs where defendant dies pending suit.
    (g) Heirs where conveyance sought and discovery.
    (h) Co-defendants of deceased judgment debtor.
    (i) Assignee in proceeding to impeach assignment.
    (j) Owner of life estate, when.
    (k) Wife of judgment debtor, when.
    (l) Husband when in proceeding by wife.
    (m) Mortgagees and judgment creditors, when.
    (n) Creditors under assignment, when.
    (o) Obligors on administrators' bond.
    (p) Participants in fraud and those claiming interest.
    (q) Third persons, when.
    (r) Creditors in proceeding against trustee.
    (s) Creditors when defendant absent.
    (t) Joint debtor not served with process.
    (u) Wife joining in deed of husband.
    (v) Tenant by curtesy.
    (w) Assignee in bankruptcy.

(x) Assignee of grantee.
(y) Purchaser from assignee.
(z) Necessary parties unaffected by decree.

66. Want of parties, how and when raised.
67. When and who are not necessary parties.
(a) Creditors when assignee is a party.
(b) Assignor of chose in action.
(c) Mortgagee when validity and priority admitted.
(d) Purchaser in redemption proceeding, when.
(e) Administrator in proceeding to cancel mortgage.
(f) Personal representatives of ancestor of debtor.
(g) President of bank when bank grantee.
(h) Customers on whose checks bank is defrauded.
(i) Partner against whom no relief is asked.
(j) Cestuis que trust when trustee party.
(k) Distributees of an estate, when not.
(l) Corporation in suit by receiver, when
68. Who may bring suit—Plaintiff.
(a) Judgment creditor.
(b) Judgment creditor, bona fide.
(c) Judgment creditor, alone or his representatives.
(d) Judgment creditor, foreign, may when.
(e) Attaching creditor.
(f) Surety when judgment paid.
(g) Surety against co-surety.
(h) Assignee of judgment.
(i) Administrator de bonis non.
(j) Creditor when administrator refuses.
69. For whom filed.
(a) In behalf of himself and other creditors.
(b) Other creditors must have common interest.
(c) Must contribute to costs and expenses.
(d) When suit must be in behalf of all creditors.
(e) Consequence of settling with plaintiff when suit for all.
70. When suit must be for all.
71. Consolidation of suits.
72. Several creditors may join as co-plaintiffs.
73. When one suit is a bar to another.
74. Several disconnected parties may be defendants.
75. When several parties may not join as plaintiffs.
76. Where suit in behalf of all who may participate.
77. When bill will be treated as in behalf of all.
78. Proceedings against administrator, etc., for all.
79. Creditors proving claims are parties and bound.

80. Plaintiff individually not bound by judgment against him as assignee.
81. Other creditors may intervene and participate in surplus.
82. Suit may be maintained by a receiver under order of court.
83. Creditors of corporation may sue, when.
84. When bill may be filed by officer of court, or master.
85. Executor or administrator may file bill.
86. A guardian for an insane person cannot sue in own name.
87. Assignee may file bill.
    (a) Assignee of claims.
    (b) Assignee of judgment.
    (c) Assignee in bankruptcy.
    (d) Assignee for creditors.
88. Other parties entitled to file bill.
    (a) Receiver.
    (b) Surety who has paid debt.
    (c) Purchaser at execution sale.
    (d) Wife of debtor when a creditor.
    (e) Subsequent creditor.
    (f) State when creditor.
    (g) Probate judge may not bring suit.
    (h) Nor sheriff.
89. Against whom filed—Defendants.
    (a) General principles.
    (b) Maker and indorser of note.
    (c) Several grantees.
    (d) Person in possession of property.
    (e) Foreign corporation.
    (f) Personal representatives and heirs, when.
    (g) Assignee in assignment for creditors.
    (h) Estate of joint debtor, when.
    (i) To reach estate of lunatic quaere.

Section **60. Necessary Parties — General Principles.** — It is well known to every practitioner that the question of necessary and proper parties to a suit in chancery is often quite perplexing. It is equally so to anyone who undertakes a careful analysis of the adjudicated cases with the hope of discovering any well defined principles of general application. About the only assistance that can be rendered is to group the cases relating to plaintiffs and defendants in such logical order as will clearly illustrate the general subdi-

visions of the subject, and thereby facilitate the discovery of precedent rather than any underlying principles that may be of pratical value in the way of guidance. A few general observations, however, relating to parties to creditor's suits may be of some practical service:

1. The plaintiff, as a general rule, and in the absence of statutory regulations must be a Judgment Creditor, or at least must have a lien secured by attachment.

2. He must not have participated in the fraudulent transaction about which complaint is made.

3. The transaction must have been of such a nature and character as to be injurious to the plaintiff as a creditor or as an owner of the property.

4. The plaintiff must be in fact and in good faith a creditor of the judgment debtor, or have acquired the right of a *bona fide* creditor, and be free from any collusion with the debtor with respect to other creditors.

5. For the purpose of preventing a multiplicity of suits, two or more judgment creditors, whose interests are not conflicting, may be coplaintiffs, or become jointly interested in the prosecution of the suit.

6. The judgment debtor, as a general rule must be a defendant.

7. And so must all parties implicated in the alleged fraud or participating in the act or transaction complained of.

8. And all parties interested in, or claiming an interest in, the subject matter of the litigation derived through or on account of the judgment debtor.

9. If the judgment debtor be dead, and it is sought to reach fraudulently conveyed property, then the administrator or executor, heirs or legatees, together with the grantee, should be parties defendant.

§ 61. All Parties in Interest Must be Before the Court. —A court of equity will not render a final decree

upon the merits unless all persons essentially interested are made parties, although some of them are not within the jurisdiction of the court.

It is a rule universally recognized in courts of equity that all persons are to be made parties to the suit who have any substantial, legal, or beneficial interest in the subject matter of the litigation, and who are to be materially affected by the decree which may be pronounced.[1]

§ 62. Where Fraudulent Conveyance is Attacked.

[1] A court of equity will not render a final decree upon the merits unless all persons essentially interested are made parties, although some of them are not within the jurisdiction of the court. Russell v. Clark's Ex., 11 U. S. 69; Cf. Christian v. Atlantic, etc., R. Co., 133 U. S. 233. All persons who have any substantial, legal or beneficial interest in the subject matter of the litigation, and who are materially affected by the decree which may be pronounced, are to be made parties. Spear v. Campbell, 4 Scam. 424. One having a real claim upon property has a right to oppose the claims of all persons who assert rights against the property which, if maintained, would defeat his claim. Buckner v. Gordy, 28 La. Ann. 596. The plaintiff may, if he chooses to do so, join, as defendants, all who are connected with the property or the transactions to be investigated, but he is only compelled to join those in whom the legal title rests, or those who have a beneficial interest to be affected. Taylor v. Webb, 54 Miss. 36; Cornell v. Radway, 22 Wis. 260; Smith v. Grim, 26 Pa. St. 95; Bowen v. Gent, 54 Md. 555. The interest may be legal or equitable. Heffron v. Gage, 149 Ill. 182. The question of parties is frequently perplexing and difficult to reduce to rule. An exception to the rule that all parties in interest must be parties to the suit is in the case of legatees and creditors where one may sue in behalf of all, and the others may come in under the decree. Brown v. Ricketts, 3 John. Ch. 553. The persons affected by the decree should be before the court. Stone v. Stone, 43 Ark. 160. The general principles of equity clearly justify the creditor in convening in one suit all parties interested in controverting the amount of his debt, and holding in their own hands, or in the hands of their trustee, the estate on which the debt is chargeable. Suckley v. Ratchford, 12 Gratt. (Va.) 60. If the answer discloses that other persons not parties claim an interest in the property sought to be reached, they must be made parties before the decree is rendered. Taylor v. Mills, 2 Edw. Ch. 318. The bill should make all parties who have an interest in the fund parties, but if not done it may be treated as brought for all, and an opportunity given to come in and present their claims. Crowell v. Cape Cod Ship Canal Co., 164 Mass. 235; Smith v. Williams, 116 Mass. 510; Libby v. Norris, 142 Mass. 246; Richmond v. Irons, 121 U. S. 27; Hallett v. Hallett, 2 Paige 15.

—(a) In a proceeding to set aside a conveyance as fraudulent as to creditors, the fraudulent grantor and grantee are necessary parties.[2]

(b) But the grantor of land purchased by an insolvent debtor, where the latter procures the title to be conveyed to another, if he is not a participant in the fraud, is not.[3]

(c) Where an assignment is attacked as fraudulent as to creditors, both the assignor and assignee should be parties; and so is the assignee of a mortgage which has been fraudulently assigned.[4]

(d) The fraudulent grantee, if in possession of the property, is particularly indispensable.[5]

(e) Where the suit is by a creditor against a fraudulent alienee to set aside a specific transfer on the ground of fraud, and it appears that the conveyance was abso-

[2] Under a bill filed to set aside a deed as fraudulent as to creditors the fraudulent grantor is a necessary party. Gaylords v. Kelshaw 68 U. S. 81. In a suit by a creditor against a fraudulent vendor to recover property fraudulently conveyed by several mesne conveyances to an innocent vendee, the intervening parties having notice of the fraud, it was held that the immediate grantor of the bona fide grantee was a necessary party. Winans v. Graves, 43 N. J. Eq. 263. Where the title to land is alleged to have been fraudulently placed in a third party, he is a necessary party to a creditor's bill. Low v. Pratt, 53 Ill. 438. A judgment debtor is a necessary party to a creditor's bill to set aside a fraudulent conveyance only when the deed of conveyance sought to be avoided contains covenants of warranty. Quinn v. People, 146 Ill. 275; Spear v. Campbell, 4 Scam. 424; Johnson v. Huber, 134 Ill. 511.

[3] Where land was purchased by an insolvent debtor and conveyed to another, in a proceeding by a judgment creditor to appropriate the land to the payment of his judgment, the grantor is not a necessary party, having parted with his interest in the land. Ballentine v. Beall, 3 Scam. 203.

[4] Wakeman v. Grover, 4 Paige Ch. 23; Gray v. Schenck, 4 N. Y. 460.

[5] Green v. Hicks, 1 Barb. Ch. 309; Cf. Parsons v. Bowne, 7 Paige Ch. 354. In a suit to set aside a fraudulent conveyance the grantee is a necessary party. Edwards v. Woodruff, 90 N. Y. 396; Cf. Hallorn v. Trum, 125 Ill. 247. A judgment creditor, under 1 N. J. Gen. Stat. p. 389, Secs. 88 et seq., may make defendant anyone to whom the judgment debtor has made a voluntary or fraudulent transfer, or who holds property or things in action in trust for such debtor. New Jersey Lumber Co. v. Ryan, 41 Atl. 839.

lute and, as between the parties, transferred an indefeasable title or interest, the fraudulent vendor is not a necessary party. This rule, however, does not apply to an assignment for the benefit of creditors.[6]

(f) Where different pieces of property were conveyed to different persons by the debtor, all the grantees may be made defendants. A bill of this character is not multifarious. The specific charge is the fraudulent act of the debtor in making the conveyances, though several parties may participate in the transaction.[7]

§ **63. Proceedings Against Corporations.**—And so is the corporation in a proceeding to reach assets in the hands of its stockholders, and to subject the same to the payment of its debts; particularly is this true where the franchise of a corporation is questioned, and the nonjoinder of an indispensable party is error.[8]

But in a proceeding to dissolve a corporation, its stockholders are not necessary parties unless made so by statute. In such case the corporation, through its corporate authorities, is the representative of the stockholders.[9]

It is not a sufficient objection in a proceeding to

[6] First Nat. Bk. v. Shuler, 153 N. Y. 163; Buffington v. Harvey, 95 U. S. 99; Campbell v. Jones, 25 Minn. 155; Potter v. Phillips, 44 Ia. 353; Fox v. Moyer, 54 N. Y. 125.

[7] Fellows v. Fellows, 4 Cow. 682. A judgment creditor, on filing a bill for the sole purpose of impounding all the assets of the debtor to pay his debts, may join as defendants every person to whom the debtor has fraudulently conveyed his property. Hulbert v. Detroit Cycle Co., 107 Mich. 81.

[8] In a suit to reach assets in the hands of stockholders and subject them to the payment of debts, the corporation is a necessary party. Swan Land Co. v. Frank, 148 U. S. 603. Where the franchise of a corporation is questioned, it is indispensably necessary that the company exercising the franchise be made a party. Baker v. Backus, 32 Ill. 79. The nonjoinder of an indispensable party may be assigned as error. Id. A suit cannot be maintained under Mill. & V. (Tenn.) Code, Sec. 4168, unless the corporation is made a party to the suit. Bickford v. McComb, 88 Fed. Rep. 428.

[9] In a creditor's bill to dissolve a corporation, stockholders are not necessary parties, except where made so by statute. Bates v. Great Western Tel. Co., 134 Ill. 536.

recover stock liability that all the stockholders are not sued.

A creditor's bill is not obnoxious to a demurrer because not brought in behalf of all creditors and against all the stockholders and directors of a corporation, where it is sought to reach assets transferred to them in fraud of plaintiff's rights. The liability of stockholders is several, and for this reason the suit may be maintained against them severally.[10]

§ **64. Joint Judgment Debtors and Joint Debtors are Necessary.**—All parties against whom judgment is rendered should be defendants.

[10] In a proceeding against a corporation and its stockholders to recover stock liabilities it is not sufficient objection to the bill that all the creditors or stockholders are not sued. If necessary, a court may at the suggestion of either party that the corporation is insolvent appoint a receiver, and thus collect all the debts due to the corporation. Ogilvie v. Knox Ins. Co., 63 U. S. 380. The liability of a stockholder for unpaid stock is several, and when sued with others to enforce his liability on stock, if he permits, his co-defendant, stockholders to drop from the suit for want of notice cannot complain that no decree is taken against them. Coleman v. Howe, 154 Ill. 458. A creditor's bill against a corporation and part of its stockholders and directors who are alleged to have had transferred to them assets of the corporation in fraud of plaintiff's right, if not enjoined by other creditors, is not obnoxious to demurrer, because not brought in behalf of all creditors, nor because not against all the stockholders. Pierce v. The Milwaukee Cons. Co., 38 Wis. 253; The Bullston Spa Bk. v. The Marine Bk., 18 Wis. 490. A judgment creditor of the corporation can maintain a creditor's bill against one or more of the stockholders, to recover the amount due to the corporation, upon unpaid subscriptions. Potter v. Dear, 95 Cal. 578. An administrator of a deceased stockholder may be made a co-defendant under a creditor's bill. Hamilton v. Railroad Co., 144 Pa. St. 34. In a creditor's bill based on a judgment, seeking to reach stockholders on their unpaid subscriptions, it is not necessary that all the stockholders should be made defendants to the bill. This is based upon the doctrine that the liability of a stockholder is several and not joint. By the subscription each becomes a several debtor to the company, as much as if he had given his promissory note for the amount of his subscription. Baines v. Babcock, 95 Cal. 581; Hatch v. Dana, 101 U. S. 205; Thompson v. Bank, 19 Nev. 103; Bartlett v. Drew, 57 N. Y. 587; Brundage v. Mining Co., 12 Or. 322. In a suit of a creditor in the nature of a creditor's bill against an insolvent corporation to reach assets illegally divided among the stockholders, all the stockholders are not necessary parties. Bartlett v. Drew, 57 N. Y. 587. He is not required to liti-

But it would seem that if a defendant to the judgment is insolvent, or not within the jurisdiction of the court, it is not necessary, provided the reason for not making such defendant a party is alleged. In a proceeding against joint debtors they should all be made parties, whether served with process or not, unless it appears that some of them are sureties for the others, or are not legally or equitably liable, or are insolvent or are beyond the jurisdiction of the court. The reason for not making them defendants must be distinctly averred. Where necessary parties are dead, their personal representatives should be brought in.[11]

gate the equities between the stockholders unless he chooses to do so. Id.

[11] Spear v. Campbell, 4 Scam. 424. In an action by a receiver in a supplementary proceeding to set aside an alleged fraudulent assignment of a chose in action, the judgment debtor is a necessary party. Miller v. Hall, 70 N. Y. 250. Where a bill was filed by a judgment creditor to reach the resulting interest of the debtor in personalty, and it appeared that other judgment creditors as well as the plaintiff had levied executions on the debtor's interest in land conveyed in the deed of trust, they were held to be necessary parties to the bill. Rountree v. McKay, 6 Jones (N. C.) Eq. 87. One of two judgment debtors against whom an execution has been returned unsatisfied as shown by a creditor's bill filed against the remaining debtor, who asserts in his answer that his co-debtor is insolvent, is not a necessary party to said suit, there being no dispute over the amount due to the complainant. Rankin v. Rothschild, 78 Mich. 10; Williams v. Hubbard, 1 Mich. 446. In this case it was shown that the judgment debtor not made a defendant was wholly irresponsible. A creditor's bill must be against all joint debtors, whether all are served with process or not, unless it is shown by the bill that the omitted parties are sureties for the others, or are not legally or equitably liable, or insolvent, or out of the jurisdiction of the court. Commercial Bk. v. Meach, 7 Paige Ch. 448; Child v. Brace, 4 Paige Ch. 309. The propriety of making parties not served defendants to the creditor's bill is to enable the other defendants to claim a contribution from them. Van Cleef v. Sickles, 5 Paige Ch. 505. If the joint debtor is omitted from the bill on the ground of insolvency, the insolvency must be distinctly averred. Van Cleef v. Sickles, 5 Paige Ch. 505. And so if one joint debtor has, as to himself, obtained a stay of proceedings, he is not a necessary party, unless it is shown that he is legally and equitably liable by the answer. Commercial Bk., etc., v. Meach, 7 P. 448. An averment that one of several joint debtors is primarily liable is not sufficient to excuse making the others parties defendants. Strange v. Longley, 3 Barb. Ch. 650. Judgment debtors are necessary parties. Vanderpoel v. Vanvalkenburgh, 6 N. Y. 190; Miller v.

§ **65. General Rule — Illustrations.** — Generally speaking, all parties whose interests are affected by the decree, or who are necessary to be before the court in order to properly protect the interests of others, when the decree shall have been rendered, are necessary parties to the suit, either plaintiffs or defendants, such as (a) the debtor of the debtor in an action for accounting.[12]

(b) The judgment debtor in a suit between a mortgagee and a judgment creditor, to determine whether an execution has been issued for more than is due, and in a suit to set aside an assignment of a judgment in contravention of the statute.[13]

(c) And so is he in a proceeding to determine which of two parties is entitled to collect a judgment.[14]

(d) The heirs where suit is brought to set aside a deed obtained by fraud from their ancestor.[15]

(e) The heirs of a deceased person where suit in equity is brought to subject land to the payment of his

Hall, 70 N. Y. 250. And so is the personal representative of a deceased debtor. Id. Where pending a bill to set aside an assignment on the ground of fraud, and also certain specific transfers, the assignor and vendor dies, the action can be continued only by bringing in as defendants the personal representatives of the deceased. Trust Nat. Bk. v. Shuler, 153 N. Y. 163; Williams v. Hubbard, 1 Mich. 446.

[12] United States v. Howland, 17 U. S. 108.

[13] Warner v. Paine, 3 Barb. Ch. 630.

[14] Clement v. Hawkins, 16 Miss. 339.

[15] Harding v. Handy, 24 U. S. 103 (11 Wheat). A bill cannot be maintained to set aside a conveyance by those who would be the heirs-at-law of the grantor were he dead. Sellman v. Sellman, 63 Md. 520. And see Irvin v. Hess, 16 Lanc. L. Rev. 17. A bill attacking a fraudulent transfer of money by the debtor to his son for the benefit of his daughter, which was afterwards loaned to the firm of which the debtor was a member and the debt preferred by the firm in its assignment for creditors, the right of the daughter to the money cannot be litigated where she is not made a party. Hamilton Nat. Bank v. Halsted, 56 Hun, 530, 31 N. Y. S. R. 809, 9 N. Y. Supp. 852. Neither the heirs of a deceased partner nor the surviving partners are necessary parties to a bill by a firm creditor to reach real property which the deceased purchased, and fraudulently conveyed to his wife for the purpose of defeating the firm creditors. Freeman v. Pullen, 24 So. 57 (Ala.).

debts, in a case where the land is primarily liable, but the personal representatives are not.[16]

(f) The heirs of a defendant who has died pending suit, where the proceeding affects his lands.[17]

(g) The heirs of the vendor in a proceeding to compel a conveyance and for discovery.[18]

(h) The codefendants of a deceased judgment debtor, where several judgments have been rendered and a bill is filed against the personal representatives and heirs of the deceased debtor seeking a discovery of assets, and the application thereof to the payment of debts.[19]

(i) The assignee in a proceeding to impeach an assignment.[20]

(j) The owner of a life estate, where the estate in remainder is alleged to have been fraudulently conveyed.[21]

(k) The wife of a judgment debtor to whom he has fraudulently conveyed his property or who has joined with him in the deed.[22]

(l) The husband, where the suit is by his wife to enjoin the sale of her separate property in a proceeding by the husband's creditors.[23]

(m) Mortgage and judgment creditors who have liens

[16] Gary v. May, 16 Ohio 66.

[17] Sexton v. Crockett, 23 Gratt. 857.

[18] McNab v. Heald, 41 Ill. 326.

[19] Thomas v. Adams, 30 Ill. 37. A court of equity has jurisdiction under a bill against the administrator of a deceased debtor and a person to whom real estate and personal property were conveyed by the deceased debtor for the purpose of defrauding creditors. Hagan v. Walker, 55 U. S. 29; Cf. Utterson v. Mair, 2 Ves. Jr. 95; Alsager v. Rowley, 6 Ves. 749; Gedge v. Traill, 1 Russ. & M. 281 n; Long v. Meyestre, 1 Johns. Ch. 306.

[20] Jamison v. Chestnut, 8 Md. 34.

[21] Where a bill is filed to reach property held by parties in remainder, alleged to have been fraudulently conveyed, the owner of the intervening life estate is a necessary party. Johnson v. Huber, 134 Ill. 511.

[22] A wife is a proper party to a bill filed to set aside conveyances of the husband's property made to her or in which she has joined, and which conveyances are alleged to be fraudulent as to creditors. Randolph v. Daly, 16 N. J. Eq. 313.

[23] Kirkpatrick v. Buford, 21 Ark. 268.

upon the property sought to be reached, in a proceeding by creditors against the debtor.[24]

(n) The creditors under an assignment, where a bill is filed by one creditor to carry the assignment into effect, or at least the bill should be filed in behalf of all. Not so, however, if the plaintiff is acting in hostility to the assignment.[25]

(o) All the obligors on an administrator's bond in a suit in equity thereon, unless a sufficient excuse is given for not doing so, such as an allegation of the insolvency of those not made parties.[26]

In an action brought against the sureties on a bond, the simple allegation of the death of the debtor, who was principal on the bond, and the insolvency of his estate, is not a sufficient excuse for not making his personal representatives parties to the suit. It must clearly appear that no considerable part of the debt could be made from the estate. The bare allegation of insolvency would be at best a mere conclusion.[27]

(p) Where a bill is filed attacking a transaction as fraudulent, not only the participants in the fraud, but all parties claiming an interest in the property through or by means of the fraud may be joined as defendants.[28]

(q) If it appears that the property and money re-

[24] Williams v. Michenor, 11 N. J. Eq. 520; Robert v. Hodges, 16 N. J. Eq. 299. Judgment creditors who have not filed a creditors' bill are not necessary parties to such a bill. Seymour v. McAvoy., 121 Cal. 438.

[25] Wakeman v. Grover, 4 Paige Ch. 23.

[26] As a general rule, all the obligors must be made parties to a suit in equity on an administrator's bond. A demurrer will lie to the bill if all are not made parties, unless a sufficient excuse is shown in the bill for the omission. Watts v. Gayle, 20 Ala. 817. An allegation of the insolvency of those who are not joined is a sufficient excuse for the omission. Watts v. Gayle, supra.

[27] A simple allegation of the death of the principal debtor, and his insolvency, will not excuse the omission to make his representatives parties to the bill; it must appear that he is so destitute of all property that no valuable part of the debt could be made out of his estate. Roane v. Pickett, 7 Ark. 510.

[28] Raynor v. Mintzer, 67 Cal. 159.

ceived by a defendant on a fraudulent judgment was the property and money of third persons, they should be parties.

(r) Where a bill is filed by a creditor to reach a fund held by a trustee for the payment of debts, all the other creditors interested in the fund must be parties plaintiff or defendant. This rule is necessary in order to protect the interests of all parties in interest and to prevent a multiplicity of suits.[29]

(s) It has been held in a proceeding against the estate of an absent defendant to subject it to the claims of his creditors all creditors should be brought in by notice.[30]

(t) A joint debtor against whom no judgment is rendered for want of service is a proper defendant.[31]

(u) And so is a wife in a proceeding to set aside a deed as fraudulent in which she joined in the execution with her husband.

(v) And a tenant by courtesy under a bill by creditors against the executors to set aside a sale of the testator.[32]

(w) And an assignee in bankruptcy.[33]

[29] A bill filed by a creditor for an account of a fund held by a trustee, for the payment of debts, will not be entertained, unless all the other creditors are made parties, either plaintiffs or defendants. Otherwise, the trustee might be subjected to as many suits as there are creditors. Fisher v. Worth, 1 Busb. (N. C.) Eq. 63. And the same rule applies where a creditor's bill seeking to reach the proceeds under an alleged fraudulent mortgage only makes the administrator of the deceased mortgagor and the mortgagee defendants. It will not be sustained for lack of essential parties. Hall v. Black, 21 Ill. App. 293. The intervening petition of one who is a proper party and who purchased property which is the subject of controversy should not be dismissed. Reid v. Sheffy, 75 Ill. App. 136.

[30] Farrar v. Haselden, 9 Rich. (S. C.) Eq. 331. A judgment creditor is a necessary party to a creditor's suit instituted to set aside a prior assignment made for the benefit of creditors on the ground of fraud. Lawrence v. Bank of Republic, 35 N. Y. 320.

[31] Thomas v. Adams, 30 Ill. 37.

[32] Romaine v. Hendrickson, 24 N. J. Eq. 231.

[33] Pennimon v. Norton, 1 Barb. Ch. 246; Lowry v. Morrison, 11 Paige Ch. 327; Edmeston v. Lyde, 1 Paige Ch. 637.

(x) And an assignee of the grantee.[34]

(y) And a purchaser from an assignee.[35]

(z) Where necessary parties are not brought into the suit, their rights remain unaffected by the decree; thus the grantee in possession under a deed from an alleged fraudulent grantor, if not in court, is in no manner bound by the decree.[36]

§ **66. Want of Parties, How and When Raised.** —The correct practice when the want of proper parties is apparent on the face of the bill is to take advantage of it by demurrer. If the objection does not so appear it may be set up by plea, or insisted on in the answer. Where the parties thus omitted are mere formal parties, or not absolutely necessary to a decision of the case, the court will not listen to the objection at the hearing. But where the rights of parties not before the court are inseparably connected with the subject matter in dispute, so that a final decision cannot be made without materially affecting their interests, the objection may be taken at the hearing, or on appeal, or on writ of error.[37]

[34] Winchester v. Crandal, Clark's Ch. 371.

[35] Penniman v. Norton, 1 Barb. Ch. 246.

[36] Hammond v. Hudson River Iron and Machine Co., 20 Barb. 378. After a party had conveyed his interest in land to another who went into possession, a proceeding was instituted in the federal court against the first party named, but not against the grantee, though he was in possession; and the title of the grantor was set aside, it was held that the grantee, not being a party to the suit, the decree did not bind him or effect his interest in the land. Hallorn v. Trum, 125 Ill. 247. A grantee of land acquiring title thereto prior to the commencement of an action in the nature of a creditor's bill against his grantor is not affected by the judgment therein unless he is made a party to the suit. Lange v. Braynard, 104 Cal. 156.

[37] Spear v. Campbell, 4 Scam. 424; Mallows v. Hinde, 12 Wheat. 193; Hallett v. Hallett, 2 Paige 15; Herrington v. Hubbart, 1 Scam. 569; Scott v. Bennett, 1 Gilm. 646; Farmers' Nat. Bk. v. Sperling, 113 Ill. 273. Where it appears that a beneficial plaintiff is a proper party to a suit, the objection that he is not a party must be raised in the trial court, or it will be waived. Atkinson v. Foster, 134 Ill. 472. Robinson v. Smith, 3 Paige Ch. 222. The objection that the judgment debtors are not joined

The court, of its own motion, will, if necessary, interfere in behalf of third parties whose interests are involved and require them to be brought into court, or may reverse judgment when it appears that necessary parties were not before the court, although no objection was taken by the pleadings or on the trial.[38]

When the objection to the nonjoinder of a party is not taken by demurrer or answer, it will not avail unless the decree would deprive the party omitted of his legal rights.

It is proper practice to demur, as seen above, where the want of proper parties is apparent on the face of the bill. If, however, the objection does not appear on the face of the bill, it may be set up by plea, or insisted on in the answer. Where the parties omitted are mere formal parties, or not absolutely necessary to a decision of the case, the court will not listen to the objection at the hearing; but where the rights of parties not before the court are inseparably connected with the subject matter in dispute, so that a final decision cannot be made without materially affecting their interests, the

as defendants in a creditor's action to set aside their assignment is waived if not taken by demurrer or answer. Hurlbert v. Dean, 2 Abb. (N. Y.) App. Dec. 428. Cf. Mallows v. Hinde, 12 Wheat. 193; Hallett v. Hallett, 2 Paige 15; Herrington v. Hubbart, 1 Scam. 569; Scott v. Bennett, 1 Gilm. 646. All parties in interest should be made parties so that their rights may be settled and also to prevent a multiplicity of suits. Willis v. Henderson, 4 Scam. 13. If, however, the court can settle the merits of the case without prejudice to the rights of others who are not parties, or if the circumstances of the case render it impracticable to make them parties, or if the parties are unknown, the court may render a decree without them. Id. The objection to a bill in chancery, for want of proper parties, should be taken by demurrer, plea or answer; if however, the omitted party is not only a proper party but is a necessary party so that the final decree cannot be rendered without affecting his or her interests, the objection may be taken at the hearing, or on appeal or error. Johnson v. Huber, 134 Ill. 511.

[38] First Nat. Bk. v. Shuler, 153 N. Y. 163; Osterhondt v. Rigney, 98 N. Y. 222; Galusha v. Galusha, 138 N. Y. 272; Moulton v. Cornish, 138 N. Y. 133.

objection may be taken at the hearing, or on appeal or error.[39]

§ **67. When not Necessary Parties.**—In the following cases the parties named have been held not to be necessary parties: (a) Creditors of an assignor under a deed of assignment when the assignee is a party.[40]

(b) The assignor of a *chose in action,* he having parted with all his interest and having no concern in the result.[41]

(c) A mortgagee in a proceeding to set aside a deed as fraudulent, where the validity or priority of the mortgage is not questioned. His lien being in no manner affected by the decree to be rendered, he has no interest in the result of the litigation.[42]

[39] Chi., M. & N. R. Co. v. Nat. E. & D. Co., 153 Ill. 70; Spear v. Campbell, 4 Scam. 424; Mallow v. Hinde, 12 Wheat. 193; Hallett v. Hallett, 2 Paige Ch. 15; Herrington v. Hubbart, 1 Scam. 569; Scott v. Bennett, 1 Gilm. 646.

[40] If the debtor has conveyed to an assignee for the benefit of creditors and the assignee is a party, the creditors need not be. Willis v. Henderson, 4 Scam. 13.

[41] The assignor of a chose in action is not a necessary party on a bill filed to recover the amount due, he having parted with his interest. Ward v. Van Bokkelen, 2 Paige Ch. 289.

[42] Venable v. President, etc., Bank, etc., 27 U. S. 107. Prior mortgagees are not necessary parties to an action by a judgment creditor to set aside a conveyance of land as fraudulent. Freeman v. Stuart, 24 So. 31 (Ala.). It is no objection to the maintainance of a bill in equity in the United States courts to obtain satisfaction of a debt out of lands of the debtor, that a prior incumbrancer, who is out of the jurisdiction, and the validity of whose incumbrance is admitted. is not made a party. Hagan v. Walker, 14 How. 29. But where the debtor of a bank gave his promissory note signed by two sureties, and conveyed certain property to a trustee to indemnify the sureties, both the trustee and cestui que trusts are indispensable parties to a bill for the subjection of this property to the claim of the bank by virtue of the trust deed. McRea v. Branch Bank of Alabama, 19 How. 376. In a bill to subject certain funds to the payment of a judgment against a trustee or commissioner to sell lands under a decree, the parties who are entitled to the funds which may be collected are not necessary parties to the bill. Harrison v. Hallum, 5 Coldw. (Tenn.) 525. On a creditor's bill seeking to have a conveyance from a debtor to his wife declared fraudulent and subject the land to sale by redemption from a prior sale under a judgment against both the husband and wife, the purchasers under the prior sale,

(e) An administrator in a proceeding by a creditor to set aside a mortgage given by the decedent which has been foreclosed and purchased by the mortgagee since the death of the mortgagor.[43]

(f) The personal representatives of a deceased ancestor of the debtor, where the purpose of the bill is to reach the debtor's portion in the estate of such ancestor.[44]

(g) The president of a bank to which a debtor has transferred property through the action of such president, since he is not, but the bank is, chargeable as a trustee.[45]

(h) The customers of a bank on whose checks money was fraudulently obtained from a bank and invested in stocks, and suit is brought by the bank to reach such stocks.[46]

(i) A partner against whom no relief is sought in a proceeding to have the individual property of another partner, alleged to have been fraudulently conveyed, applied in satisfaction of a judgment against the firm.[47]

whose rights are conceded, are not necessary parties. Kratz v. Buck, 111 Ill. 40.

[43] Where a judgment creditor of a decedent whose estate is insolvent and the administrator refuses to bring suit filed a creditor's bill to set aside as fraudulent certain mortgages given by the decedent to a son-in-law which were foreclosed after the decedent's death and the premises bought in by the son-in-law, it was held that the administrator was not a necessary party and the plaintiff was entitled to recover Munn v. Marsh, 38 N. J. Eq. 410. But after return of nulla bona on an execution against an executor, to be made of the goods and effects of his testator, a bill for the discovery of assets may be brought, to which sureties of the executor and all persons against whom a decree can be rendered, should be made defendants. Clarke v. Webb, 2 Hen. & M. (Va.) 8. Where a judgment creditor brings a bill against the estate of a deceased debtor, the administrator must be made a party to the suit. McDowell v. Cochran, 11 Ill. 31.

[44] McArthur v. Hoysradt, 11 Paige (N. Y.) 495.

[45] Delta Bank v. Oliver Finnie Grocery Co., 70 Miss. 868. In such a case no personal decree could be rendered against the officer of the bank.

[46] Bank of America v. Pollock, 4 Edw. Ch. 215.

[47] Randolph v. Daly, 16 N. J. Eq. 313. Where one of the several members of the firm removes from the state, equity has jurisdiction to subject his individual estate to the claims of creditors

(j) The *cestuis que trust* is a proceeding against an administrator, or trustee, in possession of property, whose duty it is to protect it in the interest of those entitled thereto.[48]

(k) The distributees of an estate in a suit against the executor *de son* tort to reach property fraudulently conveyed by the debtor in his lifetime.[49]

(l) In a suit by a receiver in foreign jurisdiction, the corporation is not a necessary party, the purpose being to recover the property of the company.[50]

§ **68. Who May Bring Suit as Plaintiff.**—(a) As we have already seen, it is a necessary prerequisite that there shall be a judgment against the debtor, except in a few specified cases. It follows that the attacking party must be a judgment creditor, as a general rule, except where an attacking creditor is held to have such a lien as will obviate the necessity of a judgment, and also where, from the nature of the case, the recovery of a judgment would be impossible.[51]

(b) The plaintiff who institutes a proceeding to set aside a conveyance alleged to be in fraud of creditors must be a *bona fide* creditor.[52]

A mortgagee is not entitled to file a creditor's bill

of the firm. Farrar v. Haselden, 9 Rich. (S. C.) Eq. 331.

[48] Winslow v. Minnesota R. Co., 4 Minn., 313.

[49] Watts v. Gayle, 20 Ala. 817.

[50] Bidlack v. Mason, 26 N. J. Eq. 230.

[51] A creditor's bill is properly brought in the name of the judgment creditor, as the owner of the judgment. Mann v. Ruby, 102 Ill. 348. One who is a creditor at large without judgment at the time of the decree in a creditor's bill cannot, after subsequently obtaining judgment in his favor, intervene to avail himself of a provision in the judgment or decree that any other judgment creditor of the corporation be allowed to become a party to the suit and to establish his claim. Baines v. West Coast Lumber Co., 104 Cal. 1. A person who has recovered a judgment in tort has a standing in a court of equity to attack a fraudulent transfer made subsequent to the committing of the tort. Carbiener v. Montgomery, 97 Ia. 659. And so may a mechanic's lienor as against a fraudulent mortgage. Mahoney v. McWalters, 3 App. Div. 248; 38 N. Y. Supp. 256.

[52] Townsend v. Tuttle, 28 N. J. Eq. 449.

without first offering to surrender the mortgage security or sell the mortgage property.[53]

(c) Where the proceeding is to reach property that has been fraudulently transferred, as neither the parties to the transaction nor their heirs or legal representatives are competent to impeach the transfer, it follows, both from the rules of equity procedure and the statute, that creditors alone, or their representatives, can sustain a proceeding of this nature.[54]

(d) A creditor who has recovered judgment in another state is not a judgment creditor within the requirements of this rule. He must first sue upon the foreign judgment and recover a domestic judgment, issue execution thereon and secure a proper return.[55]

(e) An attaching creditor has such a lien as will enable him to maintain a suit in chancery to set aside fraudulent judgments.[56]

And creditors having separate attachments may join.[57]

(f) Suit may be maintained by a surety who has paid the judgment or decree, or the indorser on a promissory note after payment.[58]

[53] Macgill v. Hyatt, 80 Md. 253.

[54] Where a deed is made by a debtor which is fraudulent and void as to creditors, it is binding on his heirs and representatives, and the only mode of reaching such property is by a bill by creditors. White v. Russell, 79 Ill. 155.

[55] Mechanics', etc., Bk. v. Dakin, 28 How. Pr. 502. One obtaining a judgment in another state is not a judgment creditor within the meaning of the rule which permits only judgment creditors to attack a conveyance as fraudulent as to creditors. Judgment must be rendered upon the foreign judgment as the basis of a creditor's suit. Brown v. Campbell, 100 Cal. 635.

[56] Williams v. Michenor, 11 N. J. Eq. 520; Robert v. Hodges, 16 N. J. Eq. 299; Sheafe v. Sheafe, 40 N. H. 516; Shaw v. Dwight, 27 N. Y. 244. But see McCartney v. Bostwick, 31 Barb. 390; Jackson v. Forest, 2 Barb. Ch. 576. A creditor of an insolvent debtor, who attaches his property after the commencement of proceedings in insolvency and before the assignment, has sufficient interest to maintain a bill in equity to set aside the proceedings. Merriam v. Sewall, 8 Gray (Mass.) 316.

[57] Williams v. Michenor, 11 N. J. Eq. 520.

[58] Where a surety has paid a decree he is entitled to file a creditor's bill founded on the original decree. Speiglemyer v. Crawford, 6 Paige Ch. 254;

(g) And having paid a judgment or decree against all sureties, one surety may maintain a bill against his co-sureties for contribution.[59]

(h) An assignee of a judgment may maintain a creditor's bill based thereon, and in order to do so execution need not be issued on the judgment after the assignment, and a proper return made thereon.[60]

(i) A suit may be maintained by an administrator *de bonis non* to set aside a fraudulent conveyance of his predecessor, made to defeat a judgment against him and his sureties, and he need not first proceed against the surety at law.[61]

(j) Suit may be brought by a creditor when the administrator has power to bring suit to annul a conveyance and refuses to do so, such conveyance having been made by the intestate.[62]

§ **69. For Whom Filed.**—(a) A creditor's suit may be by a single creditor in his own behalf, or it may be

Dowbiggin v. Bourne, Young's Ex'c Rep. 111; Cuyler v. Ensworth, 6 Paige Ch. 32; Lewis v. Palmer, 28 N. Y. 271. A surety may attack a fraudulent conveyance made by his principal. Hinckley v. Kreitz, 58 N. Y. 583. Where several judgments are rendered against a maker and an indorser on a promissory note the payments of the judgment against the indorser does not satisfy the judgment against the maker, and in such case the indorser is entitled to be substituted and have the benefit of the judgment for his reimbursement. Lyon v. Bolling, 9 Ala. 463.

[59] A surety who has paid a judgment against all sureties may file a creditor's bill against his co-sureties to obtain a ratable proportion of the judgment from their equitable interests not subject to execution. Cuyler v. Ensworth, 6 Paige 32; Shutts v. Fingar, 100 N. Y. 539; Wadworth v. Lyon, 93 N. Y. 201. A surety on an official bond who has paid a judgment against all sureties may maintain an action to set aside a fraudulent conveyance by a co-surety from whom contribution is sought, but in such case it is necessary to prove that he is insolvent. Mason v. Pierson, 69 Wis. 585.

[60] Rankin v. Rothschild, 78 Mich. 10. A creditor's bill may be maintained by an assignee of a judgment without again causing execution to be issued and returned. Rankin v. Rothschild, (Mich.).

[61] Harvey v. State, Rogers, 123 Ind. 260.

[62] Where a suit is to be brought to reach the lands of a deceased debtor fraudulently conveyed and the administrator refuses to bring suit, it may be by a creditor. Haston v. Castner, 31 N. J. Eq. 697; Prest, etc., v. Trenton City Bridge, 13 N. J. Eq. 46.

in behalf of all creditors who are similarly situated or who stand in the same relation to the principal defendant. There are cases, however, where, owing to the nature of the fund, and the trust relationship with which it is impressed, the suit must be in behalf of all creditors.[63]

To entitle parties to become co-complainants in a suit against a common debtor, they must be judgment creditors. The rule does not apply to simple contract creditors,[64] except where the necessity of procuring a judgment is waived by statute.[65]

[63] Wakeman v. Grover, 4 Paige 23; Parsons v. Bowne, 7 Paige Ch. 354; Eameston v. Lyde, 1 Paige Ch. 637; Cf. Blackett v. Laimbeer, 1 Sandf. Ch. 366; Lentilhon v. Moffat, 1 Edw. Ch. 451; Hendricks v. Robinson, 2 Johns. Ch. 283; Brinkerhoff v. Brown, 6 Johns. Ch. 139; Murray v. Hay, 1 Barb. Ch. 59. To entitle a creditor to come in under a decree and become a party he must be so situated as that he could have filed the bill. Parmelee v. Egan, 7 Paige Ch. 610; Cunningham v. Pell, 6 Paige 655. He must have recovered judgment and had execution returned unsatisfied. A creditor may become a party even after decree if the parties are not put to additional expense. Warner v. Hoffman, 4 Edw. Ch. 381. A creditor admitted a party plaintiff to a bill for the purpose of sharing in an equitable fund may prove his claim at once, on filing his bill, for that purpose, before the commissioner, before the cause is set for hearing. Anderson v. Anderson, 4 Hen. & M. (Va.) 475.

[64] The owners of several separate accounts not reduced to a judgment cannot join in a creditor's bill to subject property unlawfully conveyed, to the judgments they may recover. Even though the common debtor is insane and no personal judgment can be obtained against him for that reason. Faivre v. Gillman, 84 Ia. 573. The same doctrine is applied to a fraudulent assignment. Bishop v. Halsey, 3 Abb. Pr. 400; Cf. Willetts v. Vandenburgh, 34 Barb. 424; Vanbuskirk v. Warren, 34 Barb. 457. A simple contract creditor of a deceased debtor having no lien, and not having exhausted his legal remedies, cannot reach property fraudulently conveyed by the debtor in his life time, without alleging and proving a deficiency of legal assets. State Bank v. Ellis, 30 Ala. 478. Nor can a judgment creditor in such case have relief in equity, where his bill shows on its face that there are outstanding legal assets which never came to the possession of the administrator. Quarles v. Grigsby, 31 Ala. 172. Simple contract creditors cannot be joined as complainants in a bill of review to reverse a decree against their debtors. Horner v. Zimmerman, 45 Ill. 14. The right of a creditor to become a co-plaintiff in a creditor's proceeding rests upon the same grounds as his right to sue alone. Long v. Yanceyville Bk., 85 N. C. 354; and see this case as to vacating the order admitting a co-plaintiff.

[65] Comstock v. Rayford, 9 Miss.

(b) But before the bill can be filed in behalf of other creditors, they must have a common interest.[66]

(c) The suit may be in behalf of the plaintiff and all other judgment creditors having a common interest who may desire to come in and join in the suit, on contributing their relative share of the costs and expenses.[67]

This rule, applicable to judgment creditors, has been extended to apply to attachment creditors joining in one suit.[68]

(d) A creditor's suit against a corporation and its stockholders to reach the unpaid stock and apply the same to the payment of creditors must be in behalf of all creditors. This is based upon the principle that the assets of an insolvent corporation constitute a trust

423; Hartley v. Bloodgood, 16 Ala. 233. In Indiana, where a debtor has absented himself from the state, leaving property liable for his debts in equity, but none liable to legal process, the creditors, though they have not reduced their debts to judgments, may unite in a bill. Kipper v. Glancey, 2 Blackf. 356.

[66] Burney v. Morgan, 1 Sim. & Stu. 358. Creditors by different judgments, having distinct interests, may unite in one bill, against the common debtor, for an account and discovery, the object of which is to remove impediments to their remedies at law, created by the fraud of the debtor; for their interest in the object of the bill is mutual. Brinkerhoff v. Brown, 6 Johns. (N. Y.) 139. A bill to impeach an assignment filed in behalf of all other creditors similarly situated means those who are similarly situated when suit is brought. Parmelee v. Egan, 7 Paige Ch. 610. In George v. St. Louis, etc., Co., 44 Fed. Rep. 117, in a proceeding to subject a railroad to the payment of judgment it was held that creditors who intervened after the right to relief had been established were entitled to share in the proceeds ratably.

[67] Hunt v. Field, 9 N. J. Eq. 36; Myers v. Fenn, 72 U. S. 205. Where a bill is filed by an attaching creditor in behalf of himself and other creditors as in Hunt v. Field, supra, it should aver the amount for which the attachment was issued, that it had been executed, and what property was attached, and should make the defendant in the attachment a party. Creditors with the consent of plaintiff may come in and share in the expenses and results of the suit, although the suit is not alleged to be brought for the benefit of other judgment creditors. Lallman v. Hovey, 92 Hun, 419, 36 N. Y. Supp. 662. Judgment creditors may come in and make themselves parties to a creditor's bill on payment to their portion of the costs and expenses of litigation. In such case an order of permission is not required where not objected to at the time. Myers v. Fenn, 72 U. S. 205.

[68] Williams v. Michenor, 11 N. J. Eq. 520.

fund for the benefit of creditors, and to reach that fund the suit must be for all.[69]

A creditor who has exhausted his legal remedies against a corporation may sue for the benefit of all creditors of the corporation who see proper to become parties when the corporation neglects or refuses to act in the matter.[70]

But it is not essential where the assets have been illegally divided between the stockholders that all the stockholders shall be made defendants, or in other words they are not necessary parties. The creditor cannot be required to litigate the equities between the several stockholders unless he chooses to do so.

(e) Where suit is brought by one in behalf of all, the proceeding stands or falls with that suit, and the defendant, by settling with the plaintiff and satisfying the judgment, is entitled to a discontinuance of the suit.[71]

[69] Handley v. Stutz, 137 U. S. 366; Sawyer v. Hoag, 84 U. S. 610; Patterson v. Lynde, 106 U. S. 519; Johnson v. Waters, 111 U. S. 640. The rule announced in the above cases is based upon the idea that the corporation being insolvent and having no other assets the amounts due from the stockholders on their unpaid subscriptions constitute a trust fund for all creditors in which no individual could obtain a priority. But see Bartlett v. Drew, 57 N. Y. 587. An action against the receiver of an insolvent banking corporation, and a number of individual stockholders, under a statute permitting a recovery of an amount double that of the shares, is an action for equitable relief and required to be brought on behalf, not of a single creditor only, but of himself and all other creditors of the bank who may choose to come in and contribute to the expenses of the suit. Terry v. Calnan, 4 S. C. 508. In Louisiana creditors in a respite cannot sue to have property returned to the debtor's estate for their individual benefit, but any action in this direction by an individual creditor will enure to the benefit of all. Block v. Jefferies, 46 La. Ann. 1104. A deed of trust by a debtor for the benefit of all its creditors gives to all creditors alike a lien on the assets, and entitles any of them to maintain a suit in equity, as if they were specially mentioned in the trust, although the debts are simple contract debts. Foster v. Bank of Abingdon (C. C. W. D. Va.), 68 Fed. Rep. 723. Under a bill filed for the benefit of all creditors an order made requiring all creditors to prove their claims means contract creditors, judgment creditors and all others; they need not be parties to the suit. Pennell v. Lamar Ins. Co., 73 Ill. 303.

[70] Sanger v. Upton, 91 U. S. 56; Baines v. Babcock, 95 Cal. 581; Harmon v. Page, 62 Cal. 448.

[71] In an action brought by the

§ 70. When for Benefit of All.—That class of creditors' bills in which the suit can properly be said to be necessarily brought for the benefit of other creditors besides the plaintiff comprises those which seek to reach, establish and administer assets in the hands of a trustee who holds them either voluntarily or, by force of circumstances, involuntarily, for the benefit of all the creditors. They may be classed as follows:

(1) Suits to administer the estate of a decedent held by an executor or administrator and apply the same to the payment of his debts.

(2) Where a living creditor voluntarily assigns property to a trustee for the benefit of his creditors and a creditor seeks to have that trust administered.

(3) Where there is an assignment by operation of law for the equal benefit of the creditors.

(4) Where a creditor of a corporation seeks to reach unpaid subscriptions to the capital stock.[72]

(5) Where a receiver is directed by the court to sell the property of the debtor free and clear of all incumbrances and ordered to bring the proceeds into court,

plaintiffs in their own behalf, and also in behalf of all other judgment creditors who may desire to come in and participate in the benefits of the suit, does not prevent the defendant from obtaining a discontinuance by satisfying the judgment of the plaintiffs alone. Mattison v. Demarest, 1 Robt. (N. Y.) 717. Nor are judgment creditors, whose executions are unsatisfied, entitled to avail themselves of a suit, begun by another, and about being settled. Boughton v. Smith, 26 Barb. (N. Y.) 635, and such settlement will not be restrained by an injunction. Ib.

[72] Iauch v. Socarras, 56 N. J. Eq. 524, and cases cited. A bill brought by a creditor at large of a deceased debtor against the personal representative for an account of assets and the payment of his debt, permits all the creditors to come in and prove their debts, and have satisfaction of their demands equally with the plaintiff. Beverly v. Rhodes, 86 Va. 415. A judgment creditor of a corporation cannot maintain for his own benefit an action to have a transfer of corporate property to one of the officers of the corporation in violation of the New York corporation law, Sec. 48, set aside as fraudulent. Koechl v. Leibinger & O. Brew. Co., 52 N. Y. Supp. 982. A bill though in terms not for all may be treated as for all. Dunfee v. Childs, 30 S. E. 102.

establishing a fund in court for the benefit of all parties equitably entitled thereto.[73]

English Rule.—Where it is intended that the fund when recovered shall be for the benefit of all creditors who come in the bill is usually framed upon that theory and it is so stated; but it is not necessary that this shall be done, for if the case goes to a decree creditors may come in, not, indeed, as complainants or as co-complainants, but as claimants of the fund when once it is in the hands of the court. This is the rule in England, but has not been adopted in this country generally.[74]

It is, however, in this country, as stated by Chancellor Kent, a common practice for creditors to unite, or for one or more creditors in behalf of all to sue the representative of their debtor in possession of the assets and seek an account of the estate. This practice is based on the ground that there is no sound reason for requiring the creditors having judgments to separate in their suits when they have one common object in view which in fact governs the whole case, there being no particular matter in litigation peculiar to each plaintiff.[75]

The principle is well settled in chancery that a decree for the distribution of a common fund among those interested, either on the application of the trustee, executor, administrator, legatee, next of kin, or other party in interest, an absent party without notice of the proceedings, and not guilty of willful laches or unreasonable neglect will not be concluded by the decree of distribu-

[73] Kuhl v. Martin, 11 C. E. Green 60, 65. A creditor may come in and prove his demand at any time before the fund is distributed, though the time fixed by an order of court for proving the demands has previously expired. Shubrick v. Shubrick, 1 McCord. (S. C.) Ch. 406. If a bill is filed by creditors to charge the land of the debtor in the hands of devisees, the court ought to call in all the creditors of the estate to receive dividends. Kinney v. Harvey, 2 Leigh (Va.) 70.

[74] Iauch v. Socarras, 56 N. J. Eq. 524, 531.

[75] Brinkerhoff v. Broun, 6 Johns. Ch. 139, 151.

tion from asserting his right against the holder of the fund or the distributees in case it has been distributed by order of the court.[76]

(5) Under attachments against a foreign or an absconding debtor where by statute all creditors are placed upon the same footing.[77]

§ **71. Consolidation of Suits.**—Where there are several bills against the same property they may be consolidated, but the effect of consolidation does not necessarily place the parties upon an equality. The rights and equities of the complainants, notwithstanding the consolidation, remain several, and the right of each to relief must depend upon the allegations of his own bill and the evidence adduced in support of such allegations.

Even if there are priorities as to creditors the consolidation would nevertheless save a multiplicity of suits, and secure a more equitable decree in favor of all parties in interest.[78]

Where two or more creditors' bills are pending to reach the same fund it is not only proper but an expedient practice to consolidate the suits, but in such case, notwithstanding the consolidation, each bill must stand or fall upon its own allegations and the proof thereunder.[79]

[76] Williams v. Gibbes, 58 U. S. 239-255, (17 How.); In re Howard, 76 U. S. 175 (9 Wall); David v. Frowd, 1 Miln. & K. 200; Greig v. Somerville, 1 Russ. & M. 338; Gillespie v. Alexander, 3 Russ. 130; Sawyer v. Birchmore, 1 Keen 391; Shure v. Gough, 1 Ball & B. 436; Finley v. Bank of U. S., 24 U. S. 304 (11 Wheat); Wiswall v. Sampson, 55 U. S. 52, 67 (14 How.); Johnson v. Waters, 111 U. S. 640; Flash v. Wilkerson, 22 Fed. Rep. 689. In such case the rule that a party filing a bill to assail conveyances fraudulent as to creditors acquires a priority has no application. Martin v. Rainwater, 56 Fed. Rep. 7; Kimberling v. Hartley, 1 McCrary 136, 1 Fed. Rep. 571.

[77] Hunt v. Field, 1 Stock 36; Williams v. Michenor, 3 Stock. 520.

[78] Where there are several bills against the same property they may be properly consolidated. Russell v. Chicago T. & S. Bk., 139 Ill. 538.

[79] Where two creditor's bills are seeking to reach the same fund it is not only proper but expedient that the suits shall be consolidated. Russell v. Chicago T. & S. Bk., 139 Ill. 538. But

§ 72. Several Creditors May Join in One Proceeding.—For the purpose of preventing a multiplicity of suits a court of equity will entertain a bill filed by several creditors for the purpose of reaching the property of a common debtor, where such creditors have recovered judgments or decrees. In the absence of a statute otherwise all the creditors joining must be of the same character, and have a common interest.[80]

each bill must stand or fall upon its own allegations and proof thereunder. Id.

[80] Two or more creditors having a common interest in the relief prayed for may properly join as plaintiffs. Gates v. Boomer, 17 Wis. 456; Conro v. Port Henry Iron Co., 12 Barb. 27; Nelson v. Hill, 46 U. S. 127; it is not a misjoinder, Fry v. Kruse, 43 Ark. 142; Bomar v. Means, 37 S. C. 520; White's Bk. v. Farthing, 101 N. Y. 344; Dewey v. Moyer, 72 N. Y. 70; Simar v. Canaday, 53 N. Y. 298; Sage v. Mosher, 28 Barb. 287; Murray v. Hay, 1 Barb. Ch. 59; Chapman v. Banker, etc., 128 Mass. 478; Elliott v. Pontius, 136 Ind. 64; Brown v. Bates, 10 Ala. 432; Rome Bank v. Haselton, 15 Lea 216 (this was a proceeding against non-resident partners). A creditor having two judgments against a debtor, one taken before, and the other after, the appointment of a receiver, may bring a creditor's suit on both, to set aside a fraudulent mortgage. Gere v. Dibble, 17 How. Pr. 31. Several judgment creditors may join in an action against the trustees of their common debtor when the purpose of suit is the discovery of property which may be subjected to the payment of their several judgments. Gorrell v. Gates, 79 Ia. 632; De Louis v. Meek, 2 G. Greene 55; Powell v. Spaulding, 3 G. Greene, 443; Brandirff v. Harrison Co., 50 Ia. 164; Palo Alto Banking, etc., Co. v. Mahar, 65 Ia. 74; Gates v. Boomer, 17 Wis. 456; Meyers v. Fenn, 5 Wall 205; Hamlin v. Wright, 23 Wis. 492; Conro v. Iron Co., 12 Barb. 27; Clarkson v. De Peyster, 3 Paige 320; Strong v. Township, etc., 79 Ind. 208. It is the policy of the law to avoid a multiplicity of suits and an identity of interests is not always required to entitle plaintiffs to join in the suit. Gorrell v. Gates, 79 Ia. 632. Where several creditors seek to reach assets that have been transferred in fraud of creditors by several bills where no consolidation has been made, the complainants in one bill cannot intervene in another suit in order to avoid its decree. Jones v. Fayerweather, 46 N. J. Eq., 237. If the plaintiff in one creditor's bill desires to attack the decree in another suit he must file an original bill for that purpose. Id. After a decree is rendered in favor of mortgage and judgment creditors, a creditor, not a party to the suit, may file a bill for relief against the decree, on the ground that the mortgage and judgments are kept alive only for the debtor's benefit and to aid in defeating other creditors. Robinson v. Davis, 11 N. J. Eq. 302. A creditor with a judgment at law and a creditor with a decree in chancery, entitled to similar relief may join in the bill as plaintiffs. Clarkson v. De Peyster, 3 Paige Ch. 320. In Alabama a simple contract creditor and a judgment creditor

As stated above, unless otherwise provided by statute a creditor's suit may be brought by several judgment creditors joining in the same suit. This is based upon two grounds, (1) because of the identity of interest of the several judgment creditors in the question involved, as in such case the separate injury to each is produced by the same wrongful course or wrongful acts, and (2) because by such a rule a multiplicity of suits is avoided.[81]

§ 73. When One Suit Bars Another.—It sometimes happens that two separate and independent suits are commenced and each suit is in behalf of all

may join in a bill to reach property conveyed by their common debtor. Steiner Land & L. Co. v. King, 24 So. 35.

[81] Two or more creditors of an insolvent corporation, having judgments and executions returned nulla bona, may unite in filing a creditor's bill against the corporation and its stockholders to reach unpaid subscriptions to the company, and such bill is not multifarious, as in such case, there is an identity of interest in the question involved and the separate injury to each party is produced by the same cause or wrongful acts, and also because it prevents a multiplicity of suits. Hickling v. Wilson, 104 Ill. 54. Cf. Clarkson v. De Peyster, 3 Paige Ch. 320; Ballentine v. Beall, 3 Scam. 203; Fry v. Kruse, 43 Ark. 142; Lore v. Getsinger, 7 N. J. Eq. 191; Nelson v. Hill, 46 U. S. 127; Conro v. Port Henry Iron Co., 12 Barb. 27; Brinkerhoff v. Brown, 6 Johns. Ch. 139. A judgment creditor having exhausted his legal remedy, by execution and return nulla bona, may, alone, or with other judgment creditors, file a bill against a person holding property of the debtor, which cannot be reached by execution. Tatum v. Rosenthal, 95 Cal. 129. A creditors' bill brought by two judgment creditors to reach the assets of a corporation is not demurrable for a misjoinder of parties plaintiff. Baines v. West Coast Lumber Co., 104 Cal. 1. A mortgagor who delays asking to be admitted as a co-complainant until after the case has been heard on final hearing should only be admitted on condition that the expense of trying the case has first been paid. Jones v. Davenport, 45 N. J. Eq. 77. Judgment creditors holding liens upon a debtor's property, but not made parties to a creditors' bill are quasi parties and may be permitted to come in if they see fit. Kuhl v. Martin, 26 N. J. Eq. 60. Consolidation of two or more suits to reach the same assets of a debtor may be allowed at any time, though the defenses to the separate claims may be entirely different. Gilbert v. Washington Beneficial Endowment Asso. 10 App. Cas. (D. C.) 316. Citing Campbell's Case, 2 Bland, Ch. 209, 20 Am. Dec. 360; Russell v. Chicago Trust & Sav. Bank, 139 Ill. 538, 17 L. R. A. 345; Biron v. Edwards, 77 Wis. 477; Cornell v. McCann, 37 Md. 89; Conover v. Conover, 1 N. J. Eq. 403; Woodburn v. Woodburn, 23 Ill. App. 289; Schnell v. Clements, 73 Ill. 613; Thielman v. Carr, 75 Ill. 385; Moore v. Francis, 17 Tex. 28.

creditors. In such case while the pendency of one may not be a bar to the other a decree rendered in one case in behalf of all creditors will be a bar to a decree in the other, or, at least, proceedings in the other will be stayed unless the relief to be obtained in the latter is not to be obtained in the former.[82]

In the absence of an order so directing an individual creditor's bill will not be merged in a bill in behalf of all creditors.[83]

§ 74. Several Disconnected Parties May be Defendants.—Two or more persons unconnected with each other may be properly joined as defendants, as where the title to several pieces of property is in several defendants and all have been concerned in acts tending to the same illegal result forming the issue. In the same proceeding some of the defendants may be grantees in alleged fraudulent conveyances, some of them plaintiffs in whose favor judgments have been confessed and some fraudulent mortgages. The plaintiff's injury grows out of the fraud of the defendant in which several parties may participate.[84]

[82] Innes v. Lansing, 7 Paige Ch. 583. A creditor's bill brought by one creditor in behalf of all creditors of the common debtor cannot be successfully pleaded in abatement or in bar of a subsequent bill by a different creditor in a different right until after decree has been rendered in the former suit, under which all may come in and participate. Sweeney Mfg. Co. v. Goldberg, 66 Ill. App. 568. When a creditor has filed a bill in behalf of himself and all other creditors who elect to come in under the decree, a suit cannot be maintained by a separate creditor for the same purpose, unless he is entitled to more extended relief than could have been obtained in the original suit. Brooks v. Gibbons, 4 Paige Ch. 374.

[83] Van Wezel v. Wyckoff, 3 Sandf. Ch. 528.

[84] Winslow v. Douseman, 18 Wis. 456. As where the title to several pieces of property is in several defendants. In such case they are all privy to and have been concerned in acts tending to the same illegal result. Id. Fellows v. Fellows, 4 Cow. 682. Where a creditor took possession of the land of his debtor claiming that a mortgage executed by the debtor on the land was fraudulent and void as to creditors, and a bill was filed by the holder of the mortgage to establish his mortgage it was held that the suit could be maintained under Sec. 3186 Rev. Stat.

§ 75. When Several Parties May Not Join as Plaintiffs.—Under a statute which is designed to be in effect an equitable attachment in favor of a single creditor for his individual benefit two or more creditors cannot be joined as plaintiffs. Proceedings of this nature are essentially different from creditors' bills and are not governed by the principles applicable to the latter.[85]

of Wisconsin. Wilson v. Hooser, 72 Wis. 420. Where the object of the suit is single, different persons having or claiming separate interests in distinct or independent pieces of property, all connected with and arising out of the single object of the suit they may be joined as defendants so that the whole object of the bill may be obtained in one suit. Boyd v. Hoyt, 5 Paige Ch. 65. A creditor's bill seeking relief against different defendants for separate and distinct matters, by setting aside different conveyances to different persons, and a judgment confessed, and an alleged fraudulent chattel mortgage is not multifarious. Hurd v. Ascherman, 117 Ill. 501. And so a creditor's bill was maintained against several defendants to set aside different conveyances to different individuals, a judgment confessed, and a chattel mortgage, all of which being alleged to be fraudulent. Such a bill is not multifarious. Bouton v. Smith, 113 Ill. 481; Cf. Shenandoah V. Bk. v. Bates, 20 W. Va. 210. In such cases there may be several acts of the debtor all constituting an injury to the plaintiff as a creditor. Besides such a bill prevents a multiplicity of suits and is probably sustainable on that ground. Where there are several fraudulent grantees any one or more of them may be selected as fraudulent alienees and they have no right to complain that the others are not made parties. Ellington v. Moore, 4 Va. Law. Reg. 608.

[85] Debts due different persons severally cannot be joined in one bill under Mass. Gen. Stat. Ch. 113, Sec. 2, cl. 11. Chapman v. Banker, 128 Mass. 478; Jones v. Garcia Del Rio, Turn. & Russ. 297. It would be otherwise under a creditor's bill, but a proceeding under the statute is in the nature of an equitable attachment by a single creditor for his own benefit. Silloway v. Columbia Ins. Co., 8 Gray 199; Grampton v. Anthony, 13 Allen 33; Barry v. Abbot, 100 Mass. 396; Phoenix Ins. Co. v. Abbott, 127 Mass. 558. Under a bill filed to reach and apply the defendant's interest in a copartnership the court has power to establish plaintiff's debt although he is not a judgment creditor (Stat.). Draper v. Hollings, 163 Mass. 127. A creditor of a deceased person cannot maintain a bill in equity under Pub. St. Ch. 151, Sec. 3, Mass., to reach and apply in payment of his debt land fraudulently conveyed in the lifetime of the deceased. Putney v. Fletcher, 148 Mass. 247. A statute providing that any number of judgment creditors, or creditors without liens or judgments, may join as complainants in a bill for a discovery of the debtor's property and its subjection to payment of his debts, is not unconstitutional because of a failure to make provision for a jury trial to ascertain the amounts due the complainants. Cook v. New York Condensed Milk Co., 100 Ala. 580; Silloway v. Columbia Ins. Co., 8 Gray 199 (See Stat.); An-

By the statute, however, in some states a creditor's bill is maintainable only in behalf of plaintiff and all other creditors, and sometimes the procuring of a judgment is waived.[86]

§ 76. Who May Participate in Proceeds.—A bill filed by a creditor for himself and for the use of other creditors, and when the entire fund is taken possession of by the court for the benefit of all creditors, and an order is made for all to present their claims, entitles all creditors to present their claims whether they are named in the bill or not and whether they are judgment, specialty or simple contract creditors.[87]

§ 77. When Bill Will be Treated as in Behalf of All.—A bill filed to subject the real and personal estate of a deceased debtor to the payment of his debt, may be construed and treated as a bill in behalf of all

nin v. Annin, 24 N. J. Eq. 184. A single creditor may under Pub. Stat. Ch. 151, Sec. 3, Mass., maintain a bill to reach and apply in payment of his debt the fraudulently conveyed property of his debtor. Bernard v. Myroleum, 147 Mass. 356; Cf. Crompton v. Anthony, 13 Allen 33. A legal creditor may file a bill to reach legal assets, and cannot be compelled to make other creditors parties; otherwise as to equitable assets. Elmore v. Spear, 27 Ga. 193.

[86] Under the New York Statute a creditor's bill is maintainable only in behalf of plaintiff and other creditors. The National Tradesmen's Bk. v. Witmore, 124 N. Y. 241; Thompson v. Brown, 4 Johns. Ch. 619; Benson v. Le Roy, 4 Johns. Ch. 651. Under the Civil Code of Louisiana the plaintiff in a creditor's bill cannot preclude others from joining with him and participating in the proceeds. State Nat. Bk. v. Monroe Cotton P. Co., 39 La. Ann. 834. Plaintiff cannot, after permitting a creditor to become a party plaintiff and withdrawing all objection to his claim, object that he is allowed to share equally in the judgment. Goldberg v. Cohen, 119 N. C. 68. Where creditors at large are permitted to file a creditors' bill it should be in behalf of all similarly situated. Pullman v. Stebbins, 51 Fed. Rep. 10; but a priority may be obtained by filing a bill in Alabama. (Stat.) Mathews v. Mobile Mut. Ins. Co., 75 Ala. 85. A creditor of a deceased insolvent debtor may, under N. Y. Laws 1889, Ch. 487, maintain an action for the benefit of himself and other creditors to set aside a fraudulent transfer by such debtor, although he has not obtained a judgment. Cooke v. Chase, 37 N. Y. Supp. 124.

[87] Pennell v. Lamar Ins. Co., 73 Ill. 303. Such a bill is in substance a suit by all the creditors. Id.

creditors, though not in terms so designated, if such is the scope of the prayer.[88]

§ 78. Proceedings Against Administrator, Etc., for All.—As in the case of suit against an insolvent corporation it would seem that when a bill in equity is filed by a creditor against executors or administrators touching the administration of an estate the purpose being to reach a fund primarily liable for the payment of the debts of the testator or intestate the suit must be for the benefit of all creditors or parties in interest.[89]

And so when an assignment has been made and a creditor's bill is filed by one who has proved his claim the recovery is for the joint benefit of all creditors who have established their claims against the assigned property. In the proceeds they share *pro rata*.[90]

§ 79. Creditors Proving Claims Become Parties and Are Bound.—Where a fund is in the possession of the court for distribution, and notice is given to creditors to come in and establish their claim for participation in opposition to one who claims as a principal creditor, all creditors who come in pursuant to the notice and thus become parties to the suit are bound by the proceedings.[91]

§ 80. When Plaintiff Not Bound by Judgment Against Him as Assignee.—A plaintiff who prose-

[88] When a creditor files a bill to subject the personal and real estate of his deceased debtor to the payment of his debt, and prays that the administration account may be settled, that an account of all debts and liabilities of the estate may be taken, and their priorities fixed, that the amount and value of the real estate may be ascertained, and that all other accounts and orders which are proper may be taken and made, it is a creditor's bill. Duerson v. Alsop, 27 Gratt. (Va.) 229.

[89] Coddington v. Executors, etc., 36 N. J. Eq. 574; Brooks v. Reynolds, 1 Bro. C. C. 183; Drewry v. Thacker, 3 Swanst. 529; Clarke v. Earl, etc., Jac. 108; Brooks v. Gibbons, 4 Paige Ch. 374; Salter v. Williamson, 1 Green Ch. 480; Van Mater v. Sickler, 1 Stock 483; Clarke v. Johnson, 2 Stock. 287.

[90] Fisher v. Herron, 22 Neb. 183.

[91] Chestnut v. Champion, 2 Hill (S. C.) Ch. 72.

cutes in his own behalf in his individual capacity is not concluded by a prior judgment rendered against him in another suit where he there acted as assignee for creditors. He must be regarded in law as a different person and a stranger to the former suit, although the defendants and the purposes of the suit were the same.[92]

§ 81. Creditors May Intervene and Participate in Surplus.—Where the plaintiff has a priority, other creditors have a right to intervene and participate in the surplus after the plaintiff has been satisfied. The court may make such decree respecting other creditors as may seem just and equitable, notwithstanding the suit is in behalf of the plaintiff alone. This is based upon the principle that the court having jurisdiction of the *res* may protect the interests of all parties in interest.[93]

§ 82. Suit May be Maintained by Receiver, When.—The suit may be maintained by a receiver under the order and direction of the court, and particularly so

[92] In an action by a judgment creditor to reach property fraudulently transferred it appeared that a prior bill had been filed by another judgment creditor for the same purpose against the same defendant, after which he made an assignment for the benefit of his creditors and his assignee, the present plaintiff, was substituted as plaintiff and that in such action it was found that the transfer was made in good faith, and valid; and a judgment so rendered; held that the former judgment was not conclusive against plaintiffs on the question of fraud. Collins v. Hydorn, 135 N. Y. 320; Dutchess of Kingston Case, 2 Pt. 2, S. L. C. 784, (8th Ed.); Leggott v. G. N. R. Co. L. R. (1 Q. B. Div.) 599; Lauder v. Arno, 65 Me. 26.

[93] Other creditors may intervene in a creditor's proceeding and participate in the surplus after the plaintiff is satisfied in a case where he has a priority. Young v. Clapp, 147 Ill. 176 Russell v. Chicago T. & S. Bk. 139 Ill. 538. The court may order such judgment as should be rendered in behalf of the plaintiff and other creditors, in an action prosecuted for the benefit of plaintiff alone, to set aside a fraudulent conveyance, and this may be accomplished by an interlocutory decree by which creditors may have an opportunity to prove their claims. National Tradesmen's Bank v. Wetmore, 124 N. Y. 241. Notice of the institution of a general creditor's bill is sufficient to bar an independent proceeding by creditors who might have intervened, but failed to do so, after the debtor's property has been sold under the creditor's bill and the funds paid out. Barnett v. East Tennessee, V. & G. R. Co., 48 S. W. 817 (Tenn.).

where he is the representative of the creditors. He may be given this power by statute, or may have the power conferred by the order of appointment, or by special authority.[94]

§ 83. Creditors of Corporation May Sue When.—Where the right of action exists in a corporation exclusively creditors of such corporation have no right to file a creditor's bill until after a demand and refusal by the corporation to sue, except when the wrong was perpetrated by the officers of the corporation. In such case the demand and refusal as a condition precedent will be excused for the obvious reason that it would be a fruitless request.[95]

And so when an assignee for the benefit of creditors refuses to file a bill to recover fraudulently conveyed property where such property is necessary to pay debts, creditors may do so if they have proved their claims, or presented them to the assignee as provided by statute.[96]

Substantially the same rule exists where property has

[94] May be maintained by a receiver. Miller v. Mackenzie, 29 N. J. Eq. 291.

[95] Where the right of action exists in a corporation exclusively creditors cannot file a creditor's bill until after a demand or refusal by the corporation to proceed except where the wrong was perpetrated by the managers of the corporation itself. Warner v. Hopkins, 111 Pa. St. 328.

[96] Where an assignee for the benefit of creditors refuses to file a bill to recover fraudulently conveyed property where it is necessary to pay the debts a creditor may file a bill in his own name. Kalmus v. Ballin, 52 N. J. Eq. 290. A mere request by a creditor upon an assignee to institute proceedings to set aside fraudulent transfers will not be sufficient; the assignee must be informed of facts tending to show a fraudulent transfer. Kalmus v. Ballin, supra. A creditor who is authorized to institute suit in lieu of the assignee is one who has presented his claim to the assignee as provided by the statute. Where an assignee refuses to institute proceedings to set aside fraudulent transfers of property on the ground that he has no funds to make the contest it should further appear that the excuse was false or that creditors offered to supply the necessary funds or indemnify against loss. Do. Where an assignee has failed for 11 years to take proceedings to discover property of the debtor a judgment creditor may institute proceedings himself. Hamlen v. Bennett, 52 N. J. Eq. 70. In such case the fact that the creditor proved his claim before the assignee does not prevent him bringing suit. Id.

been fraudulently conveyed by a decedent and the grantee is the executor under the will of the deceased debtor. The ordinary proceeding of course would be by the executor, but he being the grantee a creditor may sue.[97]

§ 84. **When Bill Filed by Officer of Court or Master in Chancery.**—Where notes are executed in behalf of creditors and are payable to an officer of court or master in chancery, and judgment is rendered thereon, it seems a bill may be filed by such person in the court in which the notes were taken. In such case the notes are at all times under the direction and control of the court.[98]

§ 85. **Executor and Administrator May Sue, Etc.**—While as a general rule the parties to a conveyance designed and intended to hinder, delay and defraud creditors cannot set aside the conveyance, nor can those who are their successors in interest, yet where an administrator is by statute made the representative of creditors he may do so. And so may the executor under the will of an insolvent testator.[99]

The personal representatives of a deceased fraudulent grantor may recover the property fraudulently conveyed where the remaining property of the estate is inadequate to pay the debts. In such case the personal representatives are the representatives of creditors.[1]

[97] Ordinarily an action to reach property fraudulently conveyed by a decedent should be brought by his administrator or executor and not by a creditor unless he shows that he has exhausted all means to procure such an action to be brought by the proper person but where the grantee is the executrix a suit will lie in favor of the creditor. Emmons v. Barton, 109 Cal. 662.

[98] Rutland v. Cummings, 7 Humph. 279.

[99] An executor of an insolvent estate may maintain a suit in equity against the widow of his testator to set aside conveyances to her by the testator in fraud of creditors. Parker v. Flagg, 127 Mass. 28; Chase v. Redding, 13 Gray 418; Welsh v. Welsh, 105 Mass. 229; Gilson v. Hutchinson, 120 Mass. 27.

[1] Pillsbury v. Kingon, 33 N. J. Eq. 287; Stewart v. Kearney, 6 Watts 453; Buehler v. Gloninger, 2 Watts 226; Bonslough v.

§ 86. Guardian for Insane Cannot Sue in Own Name.—A guardian for an insane person cannot in his own name file a bill to avoid transfers fraudulently procured from his ward, but it must be in the name of the ward.[2]

§ 87. Assignees May File Bill.—(a) Claims against an estate which have been allowed by an executor or administrator may be assigned to one of the cred-

Bonslough, 68 Pa. St. 495; Everett v. Read, 3 N. H. 55; Abbott v. Tenny, 18 N. H. 109; Cross v. Brown, 51 N. H. 486; Fletcher v. Holmes, 40 Me. 364; McLean v. Weeks, 61 Me. 277; Andruss v. Doolittle, 11 Conn. 283; Babcock v. Booth, 2 Hill, 181; Flagler v. Blunt, 32 N. J. Eq. 518. A conveyance, void as to creditors made by an intestate may be avoided by his administrator and the land sold to pay debts under Mass. Rev. Stat. Ch. 71, Sec. 8. The proceeds of such sale though void only as to creditors existing when the sale was made may be distributed to all creditors alike. Norton v. Norton, 5 Cush. 524; Yeomans v. Brown, 8 Metc. 57. Where by statute an administrator is the representative of creditors he may file a bill to set aside a transfer, which is fraudulent as to creditors. Holland v. Cruft, 20 Pick. 321. Where an estate is not insolvent a judgment creditor may levy on real estate fraudulently conveyed by the deceased, or the administrator may do so (see Stat.). Drinkwater v. Drinkwater, 4 Mass. 354. A bill brought by an administrator of an insolvent estate to recover land alleged to have been conveyed by the intestate in fraud of his creditors, must show on its face that it is brought for the benefit of all the creditors. Crocker v. Craig, 46 Me. 327. An administrator of an insolvent estate may be entitled to the aid of a court of equity, to recover property conveyed by the intestate in fraud of his creditors, for the purpose of appropriating the same to the payment of the debts against the estate, yet one creditor cannot maintain a proceeding in equity for that purpose. Caswell v. Caswell, 28 Me. 232. A fund in court, raised upon a judgment in favor of a removed administrator, upon which he sets up a claim on account of advances, cannot be paid to the administrator de bonis non, on motion, nor upon a bill in equity by a portion only of the distributees. The administrator de bonis non must file his bill, that proper issue may be formed, and a decree be had protecting the rights of all parties interested in the fund. Oglesby v. Gilmore, 5 Ga. 56.

[2] Lombard v. Morse, 155 Mass. 136. The general rule is that the leasee must be a party to all suits which concern his title. Id. Granby v. Amherst, 7 Mass. 1, Winslow v. Winslow, 7 Mass. 96; Somes v. Skinner, 16 Mass. 348; Manson v. Felton, 13 Pick. 206; Hicks v. Chapman, 10 Allen 463; Chandler v. Summons, 97 Mass. 508; Jennings v. Collins, 99 Mass. 29; French v. Marshall, 136 Mass. 564; Myer v. Tighe, 151 Mass. 354. But see Ortley v. Messere, 7 Johns. Ch. 139; Gorham v. Gorham, 3 Barb. Ch. 24.

itors for the purpose of enabling him to bring suit to set aside a voluntary conveyance made for the purpose of hindering, delaying and defrauding creditors.[3]

(b) And so where a judgment is assigned to one who has paid the same, he becomes by right of subrogation, entitled to bring suit.[4]

(c) And the rule extends to an assignee in bankruptcy.[5]

Where the plaintiff, having filed his bill, is adjudged a bankrupt it is proper for the assignee (trustee) to file a supplemental bill; but if he refuses the plaintiff may do so and make the assignee a defendant,[6] or an assignee for the benefit of creditors.[7]

[3] Where money claims against an estate have been allowed by the executrix they may be assigned to one of the creditors for the purpose of suing to set aside a voluntary conveyance made to hinder and defraud creditors. Emmons v. Barton, 109 Cal. 662. An assignee of a demand has an equally good right, with the original creditor, to maintain a creditor's suit upon it. Cook v. Ligon, 54 Miss. 652.

[4] Where a person indorses a note upon which judgment is obtained by the assignee and on failure to collect from the maker he pays the assignee the judgment and takes an assignment of the judgment to himself, he will be subrogated to the rights of the judgment-creditor, and will be entitled to file a creditor's bill. Crawford v. Logan, 97 Ill. 396. The general rule is that an assignee of a judgment may maintain a bill for the collection thereof. Crawford v. Logan, 97 Ill. 396; Hall v. Hoxsey, 84 Ill. 616; Babcock v. Blanchard, 86 Ill. 165; Young v. Morgan, 89 Ill. 199; Richeson v. Crawford, 94 Ill. 165; Moore v. Lopliff, 107 Ill. 241; Rice v. Rice, 108 Ill. 199; Atkinson v. Foster, 134 Ill. 472; Gleason v. Gage, 7 Paige Chy. 121. But see Mann v. Ruby, 102 Ill. 348. Of course, in such case the assignment should be alleged and shown.

[5] Johnson v. Helmstaedter, 30 N. J. Eq. 124; Anderson's Assignee v. Tuttle, 26 N. J. Eq. 144.

[6] Springer v. Vanderpool, 4 Edw. Ch. 362.

[7] Southard v. Benner, 72 N. Y. 424; McMahon v. Allen, 35 N. Y. 403; Moncure v. Hanson, 15 Pa. St. 385; Tams v. Bullit, 35 Pa. St. 308. The following cases hold that the assignee has no right. Sere v. Pilot, 6 Cranch 332; Estabrook v. Messersmith, 18 Wis. 545; Browning v. Hart, 6 Barb. 91; Leach v. Kelsey, 7 Barb. 466; Maiders v. Culver, 1 Duv. (Ky.) 164; Carr v. Gale, 3 Wood C. & M. 38; Flower v. Cornish, 25 Min. 473. Unless the transfer is a fraud upon the assignee. Pillsbury v. Kingon, 31 N. J. Eq. 619; Overruling Garretson v. Brown, 26 N. J. L. 425, which in turn is itself overruled in 33 N. J. Eq. 287; Van Keuren v. McLaughlin, 21 N. J. Eq. 163; Brownell v. Curtis, 10 Paige Ch. 210; Storm v. Davenport, 1 Sandf. Ch. 135. But see Bayard v. Hoffman, 4 Johns. Ch. 450;

§ 88. Other Parties Who may File Bill.—There are various other parties who are entitled to institute suit of this nature such as (a) receiver,[8] (b) or a surety who has paid the debt,[9] (c) or a purchaser at the execution sale,[10] (d) or the wife of a debtor if she is his

Thompson v. Dougherty, 12 S. & R. 448; Vandyke v. Christ, 7 W. & S. 373. See contra Englebert v. Blanjot, 2 Whart. 240; Irwin v. Keen, 3 Whart. 347. An assignee under an assignment for the benefit of creditors may file a bill to set aside a fraudulent conveyance. Pillsbury v. Kingon, 33 N. J. Eq. 287; Overruling S. C. 31 N. J. Eq. 619, and also Van Kuren v. McLaughlin, 21 N. J. Eq. 163; Butcher v. Harrison, 4 B. & A. 129; Doe, Grimsby v. Ball, 11 M. & W. 531; Norcutt v. Dodd, 1 Cr. & Ph. 100; Holmes v. Penney, 3 K. & J. 90; Swift v. Thompson, 9 Conn. 63; Palmer v. Thayer, 28 Conn. 237; Shipman v. Aetna Ins. Co., 29 Conn. 245; Moncure v. Hanson, 15 Pa. St. 385; Bayard v. Hoffman, 4 Johns. Ch. 450; Kilbourne v. Fay, 29 Ohio St. 264; Hallowell v. Bayliss, 10 Ohio St. 536; Gibbs v. Thayer, 6 Cush. 30; Blake v. Sawin, 10 Allen, 340; Freeland v. Freeland, 102 Mass. 475; Lynde v. McGregor, 13 Allen 172; Waters v. Dashiell, 1 Md. 455; Simpson v. Warren, 55 Me. 18; Shipman v. Aetna Ins. Co., 29 Conn. 245; Shirley v. Long, 6 Rand. 735; Clough v. Thompson, 7 Gratt. 26; Staton v. Pittman, 11 Gratt. 99; Doyle v. Peckham, 9 R. I. 21. The real parties in interest must be parties, as the assignee, where an assignment has been made. Sedgwick v. Cleveland, 7 Paige Ch. 287.

[8] Where a conveyance in fraud of creditors was made several months before a proceeding in insolvency was commenced the assignee in insolvency is not entitled to recover the property as assets of the estate; but the property may be sold upon a creditor's bill by a receiver appointed for that purpose for the benefit of the plaintiffs bringing suit. Miller v. Kehoe, 107 Cal. 340. Upon the appointment of a receiver, the right to bring an action to reach and apply the concealed assets of a corporation, or its misappropriated property, passes to him and cannot be exercised by judgment creditors. South Bend Toy Mfg. Co. v. Pierre F. & M. Ins. Co., 4 S. D. 173.

[9] A security has no right to file a bill to set aside an alleged fraudulent transfer by his principal until he has paid the debt. Williams v. Bizzell, 11 Ark. 716. A surety has a right to file a creditor's bill against his cosurety to set aside a fraudulent conveyance. Shurts v. Howell, 30 N. J. Eq. 418. When a surety for a debt of a firm pays it he acquires no greater right than any other simple contract creditors of the firm. McConnel v. Dickson, 43 Ill. 99.

[10] Belcher v. Arnold, 14 R. I. 613; Smith v. Espy, 9 N. J. Eq. 160. And he need not be in possession in order to do so. Hager v. Shindler, 29 Cal. 47. If the purchaser at an execution sale of land, where the legal title is in another than the judgment debtor, conveys the land without taking possession, his grantee cannot recover possession in his own name. Hunt v. Mann, 132 Mass. 53. The purchaser in such case only has a right of action which he can transfer so as to enable the latter to sue in his own name. Id. But the grantee of one who has purchased at

creditor,[11] (e) or a subsequent creditor.[12] (f) The state as a creditor stands on the same footing as any other creditor in respect to maintaining a bill to set aside a fraudulent conveyance.[13] (g) Though a bond may be payable to a probate judge and he may sue for a breach yet he cannot maintain a bill against the obligors for discovery and appropriation of their property.[14] (h) Nor has a sheriff the right to maintain suit.[15]

§ 89. Against Whom Filed.—(a) What parties are necessary to be made defendants has been already treated fully under a preceding section entitled necessary parties and will not be extended in this connection. Stated in general terms, and to which there are some exceptions, the following may be regarded as general rules on the subject: 1. Where the purpose of the bill is to reach and apply to the satisfaction of plaintiffs

sheriff's sale land which the judgment debtor conveyed by deed of trust to other persons cannot maintain an action to set aside such deed on the ground that it was fraudulent as to creditors. Helden v. Hellen 80 Md. 616. In Maryland, a creditor who has sold his debtor's land by execution, and become the purchaser, may, by bill under the Code, Sec. 4282 et seq., subject to the satisfaction of the residue of his judgment the equitable interest of the debtor in the land by virtue of his right to redeem. Weakley v. Cockrill, 2 Tenn. Ch. 316.

[11] If a wife is a creditor of her husband, she is within the protection of the statute and entitled to invoke the aid of the courts as against the frauds of her husband. Houseman v. Grossman, 177 Pa. St. 453. A married woman may maintain a creditor's bill in her own name to set aside a conveyance by the debtor in fraud of her rights, although if she is residing in a foreign state with her husband it would be advisable to join her husband in the complaint. Johnson v. Huber, 134 Ill. 511.

[12] Claflin v. Mess, 30 N. J. Eq. 211. Both antecedent and subsequent creditors may unite in a bill attacking a transfer void as against the claims of each class. O'Neil v. Birmingham Brew. Co. 101 Ala. 383.

[13] State v. Bowen, 38 W. Va. 91.

[14] Upon a breach of an administration bond made payable to the probate judge, he is not "the person aggrieved," within Ala. Code, Sec. 2575; and he cannot maintain a bill against the obligors for discovery and appropriation of their property to the satisfaction of the breach; nor can he maintain the suit on the ground that he may become liable on his own official bond for having approved an insufficient bond. Williams v. Stoutz 92 Ala. 516.

[15] Sheriff cannot maintain. Lawrence v. Bank, etc., 35 N. Y. 320.

judgment property that has been fraudulently transferred the judgment debtor who is the fraudulent grantor is a necessary defendant. And so also is the fraudulent assignor.

2. It is equally essential to a recovery that the fraudulent grantee or assignee be made a defendant.

3. It is not essential that all the grantees be grantees in the same deed or grantees of the same piece or pieces of property. In such case the suit is based upon the fraudulent acts of the judgment debtor who to accomplish his purpose may employ one or several instrumentalities. The collusion of each is with the debtor and not with each other.

4. All persons having an interest in the property or fund sought to be reached which may be affected by the decree must be parties and as a rule defendants. Otherwise the result of the suit might be rendered nugatory. Besides in many cases a multiplicity of suits is thus obviated.

5. It is not essential that the interests of all parties may be the same or that the decree may affect all alike. It is a fundamental principle in courts of equity to settle and adjust the rights of all persons interested in the subject matter of the suit.

(b) Where the plaintiff has judgment against the maker and endorser of a promissory note he may properly make them joint defendants but is not bound to do so.[16]

(c) If the proceeding is to reach property fraudulently transferred and the conveyance is to two or more persons in separate parcels by separate deeds they may all be made defendants.[17]

[16] A creditor having judgments against the drawer and indorser of a note is not bound to make them joint defendants, but he may do so properly. Austin v. Figueira, 7 Paige Ch. 56.

[17] If the bill is to reach property fraudulently conveyed or

(d) The person in possession and control of property sought to be reached by the proceeding is a necessary defendant, as where it is sought to reach property in the possession and control of the debtor's wife.[18]

(e) And so should a foreign corporation in a proceeding based on a judgment against it.[19]

(f) While the general rule is that the personal representatives of a deceased defendant should be substituted in his stead, if it clearly appears that he had no interest in any property which could pass to his personal representatives, or his heirs, the suit need not be continued against his estate,[20] nor are the personal representatives necessary where the purpose of the suit is to reach the interest of a son in the estate of his deceased father;[21] and it would seem that the same rule applies where the judgment debtor in his lifetime procures the

conveyed without consideration to two or more persons in separate parcels and different deeds, they may all be made defendants. Boyd v. Hoyt, 5 Paige Ch. 65. A creditor's bill to subject incumbered property to the payment of a judgment by a sale and distribution of the proceeds among lien holders according to their respective priorities is based upon a single cause of action, and that is the equitable execution of a judgment against the property of a debtor. This cause of action is not divisible, though each defendant may have a separate defense to the action. Fidelity Ins. Co. v. Huntington, 117 U. S. 280.

[18] The debtor's wife is a necessary party when she is in possession and control of property sought to be reached. Copous v. Kauffman, 8 Paige Ch. 583.

[19] A creditor's bill based on a judgment against a foreign corporation where the corporation is not made a party, will not be sustained. Thomas v. The Merchants' Bk. 9 Paige Ch. 216.

[20] Where one defendant to a bill dies pending suit, and it is clearly shown that he had no interest in any property which could pass to his personal representatives or heirs, the bill need not be continued against the estate. Penniman v. Norton, 1 Barb. Ch. 246. Under a bill to subject property of a deceased debtor in the hands of heirs and devisees to the payment of a debt, notice must be given to the personal representative by service of process, if within the reach of process; otherwise by publication before a decree can be rendered. Darrington v. Borland, 3 Port. (Ala.) 9.

[21] When it is sought to reach the interest of a decedent's son in the estate the personal representatives are not necessary parties. McArthur v. Hoysradt, 11 Paige Ch. 495.

title to fraudulently purchased property to be conveyed to and the title taken in the name of another.[22]

(g) Where an insolvent person or firm makes an assignment and the assignee has assets in his hands liable for the payment of plaintiff's judgment he is a proper defendant.[23]

(h) A creditor's bill will be sustained against the estate of a deceased joint debtor where the survivor is insolvent.[24]

(i) Whether a creditor's bill will lie to reach the estate of a lunatic is doubtful.[25]

[22] Where it is sought to reach real estate when the title is taken in another, it is not necessary to make the administrator of the purchaser who was the judgment debtor a party. He is not a proper party. Jackson v. Forest, 2 Barb. Ch. 576.

[23] Haines v. Hollister, 64 N. Y. 1; Fort Stanwix Bk. v. Leggett, 51 N. Y. 552.

[24] Smith v. Ballantyne, 10 Paige Ch. 101.

[25] Copous v. Kauffman, 8 Paige Ch. 583.

CHAPTER IV.

PLEADING AND PRACTICE.

§ 100. Bill or Petition—Scope of.
- (a) Every material fact to be alleged.
- (b) All allegations tending to show fraud.
- (c) Must show plaintiff is a creditor.
- (d) Exhaustion of legal remedies.
- (e) Facts constituting the fraud must be alleged.
- (f) Fraudulent intent may be general, when.
- (g) Fraudulent participation of grantee in fraud, or notice.
- (h) Allegations in case of voluntary conveyance.
- (i) Bill not multifarious, when.

101. General frame of bill or petition.
102. Particularity required in.
103. Special allegations required.
- (a) Allegations of fraud, facts and circumstances.
- (b) Allegations of injury to plaintiff.
- (c) Allegations must show exhaustion of legal remedy.
- (d) Allegations of jurisdiction.
- (e) Allegations as to judgment and execution.
- (f) Allegations as to execution and return.
- (g) Allegations as to plaintiff's participation in fraud.
- (h) Allegations as to property to be reached.
- (i) Allegations as to indebtedness due the debtor.
- (j) Allegations as to plaintiff being creditor not sufficient.
- (k) Allegations sufficient if framed in language of statute.
- (l) Allegations must be based on facts as they exist.
- (m) Allegations of insufficiency of personal estate not required.
- (n) Allegations that debtor has no other property not required.
- (o) Allegations in case of voluntary conveyance.
- (p) Allegations of facts and circumstances—Insolvency presumed.
- (q) Allegation in case between surety and principal.
- (r) Allegation and proof must correspond—Illustration.
- (s) Allegation, sufficiency of not raised first on appeal.

(t) Allegation as to consideration of debt not required.
(u) Allegation in case of suit against heirs of deceased partner.
(v) Allegation in case estate in remainder sought to be reached.
(w) Allegation where suit is to set aside a foreclosure sale.

104. Abatement of suit.
(a) Pendency of former suit for all, not.
(b) Payment of judgment is.
(c) By foreclosure of mortgage on the property.
(d) Suspended by death, when.

105. Verification.
106. Prayer—Special relief and general relief.
107. Plaintiff has right to control litigation.
108. Lis pendens—Commences when—When operates as—Theory of.
109. Answer, frame of.
110. Answer, scope of.
111. Answer, when under oath.
112. Answer, form of—Usually in two parts.
113. Answer, insufficiency of.
(a) That defendant had other property, liable.
(b) Answer inconsistent with defendant's acts.
(c) Must be excepted to.
(d) When defense should have been interposed to judgment.
(e) Motives of plaintiff immaterial.
(f) Replevin suits pending not sufficient.
(g) Pendency of other suits between same parties.
(h) Insolvency proceedings.
(i) Judgment appealed from.
(j) When not traversable.
(k) Irregularity in return day no defense.
(l) Defense to demand no defense to bill.
(m) Denial of fraud when facts admitted.
(n) Defense if not raised will be treated as waived.

114. Demurrer to bill.
115. Cross bill or petition.
116. Supplemental bill or petition.
117. Decree.
(a) General nature of relief.
(b) Specific relief.
(c) Must be in harmony with bill.
(d) Against grantee—Scope of.
(e) When decree granted will not estop plaintiff.

(f) When grantee personally liable.
(g) For interest.
(h) As to what conclusive on reversal.
(i) Effect of when based on insufficient evidence.
(j) Must be confined to amount due on judgment.
(k) Definiteness as to land to be sold.
(l) May direct clerk to enter satisfaction of mortgage.
(m) May direct surrender of possession, when.
(n) When corrected on motion.
(o) Directing assignment not now required.
(p) Must be obeyed though improvidently made.
(q) If void may be attacked at any time.
(r) If land misdescribed title will not pass.
(s) Against administrator for money due estate.
(t) Of homestead in fraudulent debtor.
(u) Settles rights between plaintiffs and all parties.
(v) When creditors share pro rata.
(w) Creditors must come in in some way.
(x) Sometimes granted on terms, illustration.
(y) When grantee has sold the property.
(z) May not be in the alternative.
(aa) Cannot embrace land not in pleadings.
(bb) Should cancel fraudulent deed and order sale.
(cc) Not disturbed on appeal if evidence conflicting.
(dd) May direct equitable rights, choses in action sold.
(ee) May direct payment from note given to grantee.
(ff) Need not in terms direct payment of judgment.
(gg) Where several cases heard together, separate decrees.
(hh) Is for amount due on judgments not former decree.
(ii) May not have decree over against admr., when.
(jj) Gives plaintiff priority over fraudulent conveyance.
(kk) Nature of when based on verdict of jury.
(ll) Should not be for damages.
(mm) Where fund belongs to a class decree must be for all.
(nn) May protect as to actual consideration, when.
(oo) Should not be for larger sum than due plaintiffs.
(pp) May put plaintiff in possession.
(qq) Must not be for plaintiff alone if bill for all.
(rr) Solicitor's fees, when allowed.

118. Appeals and writs of error.
(a) U. S. Supreme Court, and Circuit Court of Appeals.
(b) Appeals generally.

119. Discharge in bankruptcy as a defense.
(a) Where discharge since filing of answer.

(b) Where suit commenced before decree in bankruptcy.
(c) Practice where plaintiff contests validity of discharge.
120. Limitations as a defense.
(a) Statute no bar in case of fraudulent conveyance.
(b) Where legal and equitable cause of action exists.
(c) Limitations as a defense must be pleaded.
121. Laches as a defense.
(a) Set up in the answer—Discovery of fraud.
(b) May be by demurrer or on hearing.
(c) Not purely a matter of time.
(d) Reason for delay to be specifically alleged.

General. —Under whatever form of practice the pleadings should clearly and distinctly set forth the plaintiff's cause of action and the defendant's answer thereto. While the general trend of modern practice in England and in this country is in the direction of liberality in the way of amendments, and the abolishment of many of the technicalities and informal requirements of the earlier practice good pleading still requires in the pleader a clear conception of the law in regard to right of recovery and defense, and the facility of stating in apt language all material allegations both as to law and fact and with such precision and exactness that the court and opposing counsel can readily see the basis of the action or defense. The loss of a meritorious case from careless and negligent pleading ought to be a matter of censure from the court as well as condemnation in legal ethics. In the class of actions under consideration, good pleading does not mean much speaking or vain repetitions or circumlocution in statement on the one hand nor confused, imperfect and mystifying brevity in statement on the other. The defendant in every case has a right to a reasonably full and complete statement of all the material facts and circumstances which constitute the plaintiff's cause of action in order to prepare and state his defense thereto if he has one. The plaintiff

has a right to the same definiteness and precision in the defendant's answer or plea, and this devoid of all evasion and equivocation.

§ **100. The Bill or Petition, Scope of.**—The bill or petition, sometimes denominated complaint, must, of course, accommodate itself to the nature of the cause of action and the character of relief proper to be granted thereunder. The pleader should in all cases clearly comprehend the law applicable to the facts and circumstances as he understands them to be, and at the same time fully apprehend the remedy the court will apply if the proof is sufficient. The so-called reformation in pleading brought about by the adoption of code procedure in most of the states in this country during the last fifty years, however commendable the purpose, has resulted in confusion and great lack of uniformity as to forms of statement, so that in this class of actions only a few general principles of general purport are stated and these must be understood and considered with reference to modifications rendered necessary by local pleading and practice.

(a) Every material fact which it is necessary for the plaintiff to prove in order to establish his right of action in equity must be alleged in the bill or petition with reasonable fullness and particularity.[1]

(b) All allegations of fact which tend to establish the fraudulent alienation or other fraud complained of should be set forth with reasonable certainty and distinctness so that the court may readily see the issue to be tried, and in order that the defendant may admit or deny the same and interpose such defense as he may have, if any.[2]

[1] Rorback v. Dorsheimer, 25 N. J. Eq. 516; Smith v. Wood, 42 N. J. Eq. 563; Cf. Virginia F. & M. Ins. Co. v. Cottrell, 85 Va. 857; Bierne v. Ray, 37 W. Va., 571; Pusey v. Gardner, 21 W. Va. 469.

[2] The delivery of the deed is a material fact to be alleged and

(c) The plaintiff must allege that he is a creditor of the debtor defendant and where the object of attack is the fraudulent alienation of property he must, generally, show the existence of the indebtedness at the time the transfer was made.[3]

(d) The exhaustion of legal remedies should be alleged which is usually done in this class of actions by showing a judgment in force and effect, an execution issued thereon and generally a return thereon *nulla bona*.

If the facts are such that no judgment can be rendered and execution issued then such facts, whatever they may be, must be alleged. Otherwise an exhaustion of legal remedies would not be made out.

(e) A general allegation of fraud is not sufficient. At most such an allegation is a conclusion of law, and therefore the facts constituting the fraud must be alleged and shown.[4]

proven. Doerfler v. Schmidt, 64 Cal. 265.

[3] To impeach a voluntary conveyance successfully, it devolves upon the complainants to aver and prove that they were creditors at the time, and that the grantor was then insolvent, or such facts and circumstances as would authorize a court, or jury, to presume insolvency. Moritz v. Hoffman, 35 Ill. 553; quoted and approved in Merrell v. Johnson, 96 Ill. 224; Uhre v. Melum, 17 Ill. App. 132; Koster v. Hiller, 4 Ill. App. 21. To the same effect are Carpenter v. Osborne, 102 N. Y. 552; Adsit v. Butler, 87 N. Y. 585; Elwell v. Johnson, 3 Hun, 558; Donley v. McKiernan, 62 Ala. 34. But where the land is conveyed by a father to his son for the grantor's own use and benefit, it makes no difference whether the debt was contracted before or after the conveyance. Newman v. Van Duyne, 42 N. J. Eq. 485.

[4] A suitor who seeks relief on the ground of fraud must do something more than make a general charge of fraud. He must state the facts which constitute the fraud, so that the persons against whom relief is sought may be afforded a full opportunity, not only to deny or explain the facts charged, but to disprove them. He has a right to know in advance just what he will be required to meet. Smith v. Wood, 42 N. J. Eq. 563; Small v. Bordinot, 9 N. J. Eq. 381; Gilbert v. Lewis, 1 De G. J. & S. 38. Where the bill charges that if a sale of lands has been made it was not made in good faith, nor for an adequate or valuable consideration but as a step in the execution of a scheme which the assignor had contrived for the purpose of defrauding creditors, the court says: "This averment is subject to almost every objection which it is possible to urge against an imperfect plead-

(f) An allegation of fraudulent intent on the part of the grantor is sufficient in connection with the material facts complained of. Intent relates to the motive or purpose in the mind of the grantor prompting the action and from which relief is sought.[5]

(g) Except in the case of a voluntary conveyance the participation of the grantee in the fraud must be alleged; or knowledge on his part of such facts and circumstances as will impute notice. If the facts are brought to the knowledge of a party which would put him as a man of common sagacity upon enquiry he is bound to enquire and if he neglects to do so he will be chargeable with notice of what he might have learned on examination. This is constructive notice.[6]

ing." Smith v. Wood, 42 N. J. Eq. 563. Mere general allegations of fraud or conspiracy are of no value in stating a cause of action. Wood v. Amory, 105 N. Y. 278; Van Weel v. Winston, 115 U. S. 228; Cohn v. Goldman, 76 N. Y. 284; Knapp v. City of Brooklyn, 97 N. Y. 520. The material facts upon which the plaintiff relies must be so distinctly alleged as to put them in issue. St. Louis, etc., R. Co. v. Johnston, 133 U. S. 566, 577; Harding v. Handy, 11 Wheat 103. "Mere words, in and of themselves, and even as qualifying adjectives of more specific charges are not sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or a breach of trust, for which a court of chancery can grant relief." St. Louis, etc., R. Co. v. Johnston, 133 U. S. 566, 577; Van Weel v. Winston, 115 U. S. 228, 237; Ambler v. Choteau, 107 U. S. 586. Fraud being a conclusion of law, it is incumbent upon the party who alleges it to state the facts which constitute it and to state them specifically. Dexter v. McAfee, 163 Ill. 508. The evidence necessary to support allegations of a fraudulent intent may be, and usually is, made up of many different facts and circumstances, but it is not necessary to insert them in the pleading, and it is generally improper to do so. Kain v. Larkin, 141 N. Y. 144; Cf. Reed v. Bott, 100 Mo. 62; Curran v. Olmstead, 101 Ala. 692; Leasure v. Farquer, 27 Ore. 334; Blair v. Finlay, 75 Tex. 210; West Coast Grocery Co. v. Stenson, 13 Wash. 255. General language that the conveyances were fraudulent or were made with intent to defraud creditors, coupled with allegations that the grantor was heavily indebted when he made them; that they were without consideration; that he had no other property to satisfy the plaintiff's judgment is sufficient. From these allegations the law imputes fraud. Marston v. Dresen, 76 Wis. 418; Williams v. Spragins, 102 Ala. 424.

[5] Nat. Union Bk. v. Reed, 27 Abb. N. C. 5.

[6] Where the grantee has knowledge of such facts and circumstances as are sufficient to

(h) Where the conveyance complained of is a voluntary transfer it should also be alleged and shown that by reason thereof the debtor became insolvent, or unable to

excite the suspicions of a prudent man and put him on enquiry he becomes a party to the fraud. Bartles v. Gibson, 17 Fed. Rep. 297; Cf. Baker v. Bliss, 39 N. Y. 70; Williamson v. Brown, 15 N. Y. 354; Avery v. Johann, 27 Wis. 246; David v. Birchard, 53 Wis. 492; Atwood v. Impson, 20 N. J. Eq. 156; Marrow Shoe Mfg. Co. v. New England Shoe Co., 57 Fed. Rep., 685; Bigelow on Frauds, pp. 288-9. While the grantee was not bound to act upon mere suspicion as to the intent with which the grantor made the sale, if he had knowledge or actual notice of circumstances sufficient to put him, as a prudent man, upon enquiry as to whether the grantor intended to delay or defraud his creditors, and he omitted to make such enquiry with reasonable diligence, he should have been deemed to have notice of such fact. Whatever is notice enough to excite attention and put the party on his guard, and call for enquiry, is notice of everything to which such enquiry might have led. Shawer v. Alterton, 151 U. S. 607, 622; Wood v. Carpenter, 101 U. S. 135, 141; Kennedy v. Greene, 3 Myl. & K. 699, 722; Parker v. Conner, 93 N. Y. 118; Bush v. Roberts, 111 N. Y. 278, 282. In such case the acts and declarations of the grantor are not admissible against the grantee unless they are part of the res gestae. The declarations of a party which are claimed to be a part of the transaction must grow out of the principal fact or transaction, illustrate its character, be cotemporaneous with it. Bush v. Roberts, supra; Lund v. Tyngsborough, 9 Cush. 36; Tousley v. Barry, 16 N. Y. 497; Truax v. Slater, 86 N. Y. 630. In Parker v. Conner, 93 N. Y. 118, 124, the court says: "The jury may be satisfied that the purchaser was, in fact, entirely innocent and free from any guilty knowledge, or even suspicion of fraud; but if they find that facts were known to him which were calculated to put him on enquiry, his want of diligence in making such enquiry is equivalent to a want of good faith, and the presumption of notice is a legal presumption which is uncontrovertible." Baker v. Bliss, 39 N. Y. 70. No active duty of diligence, however, is cast upon the purchaser, in favor of creditors which requires him to suspect and investigate the motives of the vendor. The doctrine of constructive notice has been abandoned in England and actual notice is there required. Crook v. Jadis, 5 B. & Ad. 909; Backhouse v. Harrison, 5 B. & Ad. 1098; Goodman v. Harvey, 4 Ad. & Ellis, 870. In Pringle v. Phillips, 5 Sandf. 157, the doctrine of constructive notice was applied to the sale of merchandise by one who had obtained it by fraud to a purchaser for value who claimed to be a bona fide purchaser, and after a full review of the later English cases the doctrine there prevailing was not adhered to and constructive notice was applied. This case was followed by Danforth v. Dart, 4 Duer 101. In the later cases, however, of Magee v. Badger, 34 N. Y. 247, and Belmont Branch Bk. v. Hoge, 35 N. Y. 65, the later English cases were followed, and it was there held that circumstances sufficient to put the purchaser on enquiry were not sufficient to deprive him of the character of a bona fide holder. Knowledge on the part of the grantee of the fraudulent intent of the grantor, or knowledge of such facts and

pay his debts; *non constat* he may have had sufficient property remaining to pay them.[7]

(i) A creditor's bill by partnership creditors seeking to

circumstances by him as ought to have put him on enquiry and would have led to his ascertaining the truth, or would have afforded a reasonable ground for the inference that he purposely or negligently omitted to make such enquiries as an ordinarily prudent and cautious man in his situation would have made, is sufficient to charge the grantee. Hooser v. Hunt, 65 Wis. 71; Avery v. Johann, 27 Wis. 246; Brinkman v. Jones, 44 Wis. 498; Helms v. Chadbourne, 45 Wis. 60. In the above case of Hooser v. Hunt the court comments on the New York doctrine of Parker v. Conner, 93 N. Y. 118; Stearns v. Gage, 79 N. Y. 102; Farley v. Carpenter, 27 Hun, 359, and refuse to follow it. In De Witt v. Van Sickle, 29 N. J. Eq. 209, 215, it is said: "A person who deals in the avails of a scheme to defraud creditors to keep what he gets, must not only pay for it but he must be innocent of any purpose to further the fraud, even to protect himself. Actual notice need not be shown. If the purchaser has before him, at the time of his purchase, facts and circumstances from which a fraudulent intent, either past or present, on the part of the vendor, is a natural and legal inference, or such facts or circumstances of suspicion as would naturally prompt a prudent mind to further enquiry and examination, which, if pursued, would lead necessarily to a discovery of the corrupting facts, he is chargeable with notice. A person who wilfully closes his eyes to avoid seeing what he believes he would see if he kept them open, must be considered to have seen what any man with his eyes open would have seen." Tantum v. Green, 21 N. J. Eq. 364. A mortgage may be void as to creditors though given to secure an honest debt. David v. Birchard, 53 Wis. 492.

[7] If the grantor remains solvent after the conveyance and has sufficient property left to satisfy all his debts, then the conveyance, whatever his intention was, cannot be a fraud upon his existing creditors. Kain v. Larkin, 131 N. Y. 300, 307. The person assailing a deed assumes the burden of showing that it was executed in bad faith, and that it left the grantor insolvent and without ample property to pay his existing debts and liabilities. Kain v. Larkin, supra; Pence v. Croan, 51 Ind. 356; Sherman v. Hogland, 54 Ind. 578; Whitesel v. Hiney, 62 Ind. 168; McCole v. Loehr, 79 Ind. 430; Nevers v. Hack, 138 Ind. 260; Wilbur v. Fradenburgh, 52 Barb. 474; Dygert v. Remerschnider, 32 N. Y. 629; Holden v. Burnham, 63 N. Y. 74; Genesee River Bk. v. Mead, 92 N. Y. 637; Rice v. Perry, 61 Me. 145. The character of a transaction is to be determined by the circumstances surrounding the parties at the time it took place. The validity does not depend on subsequent events. McCole v. Loehr, 79 Ind. 430. The financial condition of the grantor fifteen months after the conveyance is insufficient. Whitesel v. Hiney, 62 Ind. 168. An allegation of fraud on the part of the grantee in a voluntary conveyance is not required. McAuinch v. Dennis, 123 Ind. 21. Where the action is based on a voluntary conveyance the relationship, if any, between the parties should be alleged, and also the want of consideration. Des Moines, Etc., R. Co. v. Alley, 16 Fed. Rep. 732.

set aside fraudulent conveyances made by the individual members of the firm is not multifarious.[8]

§ 101. The Bill or Petition—General Frame of.—The bill or petition is the statement of complainant's or plaintiff's cause of action or basis of suit. The right of the plaintiff to invoke the aid of a court of equity must appear from the allegations of the bill, and the mere averment of jurisdiction will not be sufficient. The bill must show the facts that are relied upon to constitute an equity proceeding and to constitute jurisdiction in the court, over the subject matter. There are three things that must appear upon the face of every bill of this nature: (1) The equitable jurisdiction of the court in regard to the subject matter. (2) Power of the court to grant relief to the plaintiff under the averments as to the particular facts and circumstances. (3) Jurisdiction over the person of the defendant or his property. It is sometimes said that equity pleading does not require the same degree of precision and definiteness required in common law proceedings. It is true that a court of chancery has in view the end sought by the proceeding, the relief to be granted, rather than technical formalities as to the mode of statement of the cause of action, and looks with some degree of leniency upon defective pleadings, informalities in statement, illogical arrangement, and other defects apparent on the face of the pleadings, due to haste or indifference in the pleader, but nevertheless every bill should be so framed as to state in a clear and concise manner all the material facts and circumstances relied upon and in such apt language that the court can readily see the full purport of every averment, and the defendant can admit or take issue thereon.

§ 102. Particularity Required.—No rule in equity pleading is better established than that which declares

[8] Steiner Land & L. Co. v. King, 24 So. 35.

that every material fact which it is necessary for a complainant to prove to establish his right to the relief he asks must be alleged in the bill with reasonable fullness and particularity, and he who seeks relief on the ground of fraud must do something more than make a general charge of fraud. He must state the facts which constitute the fraud, so that the person against whom relief is sought may be afforded a full opportunity not only to deny or explain the facts charged but to disprove them. He has a right to know in advance just what he will be required to meet.[9]

The object of a pleading of any kind is to state the facts upon which the rights of the parties depend and nothing more. And so when a bill in chancery contains irrelevant and impertinent matter, such as mere legal arguments and reasons occurring to counsel why this or that step should or should not be taken and the violation of the rule is palpable and gross the court itself will direct the elimination of the impertinent matter.[10]

A suit in chancery cannot be maintained as a creditor's bill when it has not been framed as such.[11]

§ 103. Special Allegations Required.—As we have seen every material fact and circumstance necessary for the plaintiff to establish his right to relief must be al-

[9] Campbell v. Powers, 139 Ill. 128; Waugh v. Robbins, 33 Ill. 181; Mercier v. Lewis, 39 Cal. 532; Walker v. Ray, 111 Ill. 315; Union M. L. Ins. Co. v. Slee, 110 Ill. 35; Jackson v. Miner, 101 Ill. 550; Webster v. Webster, 55 Ill. 325; Fitzpatrick v. Beatty, 1 Gilm. 454; Smith's Admr. v. Wood, 42 N. J. Eq. 563; Rorback v. Dorsheimer, 25 N. J. Eq. 516; Small v. Boudinot, 9 N. J. Eq. 381; Gilbert v. Lewis, 1 De G. J. & S. 38. An averment that a conveyance was made with the intent to hinder, delay and defraud creditors, is sufficient to sustain a judgment in behalf of plaintiff, in the absence of a special demurrer. Bull v. Ford, 66 Cal. 176. It is essential to a recovery that every material fact should be stated in the complaint, but it is not necessary to state minutely every circumstance that would tend to prove the general charge. Harrison v. Kramer, 3 Ia. 543.

[10] Pinneo v. Goodspeed, 104 Ill. 184.

[11] The Chicago D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151.

leged in the bill or petition and shown on the hearing, and the allegations should be made with reasonable fullness and clearness. Of course the allegations differ with each case on account of the variance in the facts and circumstances. Some of the most general allegations will now be noticed.[12]

(a) It has been elsewhere observed that a mere allegation of fraud is not in any case good pleading. Where a bill is filed asking relief on the ground of fraud the facts relied upon to establish fraud must in all cases be specifically alleged,[12] unless perhaps where the suit is to set aside a fraudulent conveyance and fraud is apparent on the face of the deed, in which a general allegation will be sufficient.[14] Fraud must be specifically charged and cannot be presumed.[15]

[12] Administrators, etc., v. Wood, 42 N. J. Eq. 563.

[13] Administrators, etc., v. Wood, 42 N. J. Eq. 563; Conway v. Ellison, 14 Ark. 360. A creditor's bill, to reach acquitable assets alleged to be fraudulently conveyed, must contain facts which are reasonable proof of fraud, as well as corresponding averments. Kinder v. Macy, 7 Cal. 206; McGough v. Insurance Bank, 2 Ga. 151; Cox v. Dunham, 8 N. J. Eq. (4 Halst.) 594; Skinner v. Stuart, 15 Abb. Pr. 391; 13 Id. 442. A general charge of fraud and confederation is not a sufficient ground upon which a court of equity will give aid. Beck v. Rainey, 28 Miss. 111. It is not enough to charge, in general terms that it was obtained by fraud, circumvention and deception, but there must be a specific statement of the facts which constitute the fraud, etc., to cause a court of equity to set aside a deed. Emery v. Cochran, 82 Ill. 65. A general charge or statement of the matter of fact relied upon as establishing fraud is all that is required. It is unnecessary to charge minutely all the circumstances that conduce to prove the general charge, as these are matters of evidence. Mitchell v. Byrns, 67 Ill. 522. The manner of the fraud should be shown by proper averments. Hovey v. Holcomb, 11 Ill. 660. And the allegations of fraud must be clearly proved, by a preponderance of evidence. Babbitt v. Dotten, 14 Fed. Rep. 19; Wickham v. Morehouse, 16 Fed. Rep. 324; Mahaffy v. Mahaffy, 63 Ia. 55. And while parol evidence is admissible to prove the alleged fraud, etc., the evidence should always be clear and indisputable. Rowand v. Finney, 96 Pa. St. 192.

[14] It is not necessary, in an action to set aside a conveyance, fraudulent on its face, that the complainant should specify the objectionable clauses. It is sufficient to aver that the conveyance was made to defraud creditors. Jessup v. Hulse, 29 Barb. (N. Y.) 539. To same effect is, Hastings v. Thurston, 10 Abb. (N. Y.) Pr. 418; S. C. 18 How. Pr. 530.

[15] Gray v. Galpin, 98 Cal. 633.

(b) Nor is it sufficient to allege that the debtor has made a fraudulent conveyance of any portion of his property, but it must be shown in addition that the fraudulent disposition alleged may embarrass the plaintiff in the collection of his debt. It is the fraudulent act of the debtor that injures or tends to injure the creditor that he has a right to complain of. Facts must be stated from which at least an inference may be formed that a court of equity may be required to aid the plaintiff in enforcing his judgment.[16]

(c) The allegations in the bill must be sufficiently specific as to show that the plaintiff has exhausted his legal remedies, and that he has been unable to collect his judgment.[17]

(d) Where the bill is based on a judgment of special jurisdiction is not necessary to aver facts conferring

[16] Dunham v. Cox, 10 N. J. Eq. 437. Plaintiff must show himself to be injured by the acts of those of whom he complains. Fox v. Heath, 16 Abb. (N. Y.) Pr. 163.

[17] A creditor's bill which avers that a judgment debtor owns or is in some way beneficially interested in real estate described worth more than the debt, shows that the plaintiff's legal remedy has not been exhausted, and he has no equitable cause of action. Williams v. Sexton, 19 Wis. 42. A bill alleging the recovery of judgments by plaintiffs, the issuance and return of executions thereon no property found; the concealment of property by defendants; the fraudulent conveyance by one defendant to his wife; and praying for a discovery and an accounting and general relief is good in equity. It clearly showed a case requiring an answer from each defendant to the judgments. Mitchell v. Byrns, 67 Ill. 522. A bill filed under Miss. Code 1880, § 1843, need not show that defendant is insolvent, or that complainant cannot obtain satisfaction of his demand without resorting to the property which he seeks to subject. Citizens Bank v. Buddig, 65 Miss. 284. When a bill is filed to reach equitable interests, choses in action, or the value of property fraudulently conveyed the bill should state that judgment has been obtained and that execution has been issued and returned by the officer without satisfaction. Taylor v. Bowker, 111 U. S. 110; Corey v. Greene, 51 Me. 114; Griffin v. Mitcher, 57 Maine 270; Howe v. Whitney, 66 Maine 17; Webster v. Clark, 25 Maine 313. All that is required to be alleged in a creditor's bill to set aside a fraudulent conveyance made by one or several defendants is to show that all legal remedy has been exhausted; that executions have been issued upon the judgment against each of the defendants therein and returned unsatisfied. Quinn v. People, 146 Ill. 275.

jurisdiction, a general averment of jurisdiction being sufficient, but where the question of jurisdiction is controverted, facts giving jurisdiction must be shown.[18]

(e) The bill or petition should allege the recovery of a judgment, when and where, by whom and against whom and the amount thereof. And so also in regard to the issuance and return of an execution, where these are elements forming the basis of a creditor's bill, an allegation that on a day named an execution was issued in due form of law on the judgment, and on a day named was duly returned, by the officer named, wholly unsatisfied, are sufficient allegations in form.[19]

[18] Pierstoff v. Jorges, 86 Wis. 128. It is not necessary to state the docketing of the judgments, but when the judgment is in an inferior court and the execution issues to another county than that in which the judgment is rendered it is. Youngs v. Morrison, 10 Paige Ch. 325.

[19] In addition to the averment as to the recovery of a judgment, when and where, by whom and against whom and the amount, the bill should also show the issuance of an execution on the judgment (in Illinois within one year from the date thereof), to what county issued, when delivered, and the return of the officer thereon. Durand v. Gray, 129 Ill. 9; Cassidy v. Meacham, 3 Paige Ch. 311; Mitchell v. Byrns, 67 Ill. 522; Quinn v. People, 146 Ill. 275; Ishmael v. Parker, 13 Ill. 324. In a bill to reach equitable interests of a debtor, unless otherwise provided by statute, it must set forth a judgment in the jurisdiction where the suit in equity is brought, the issuing of an execution thereon and its return unsatisfied, or must allege that it is impossible to obtain such a judgment in any court within such jurisdiction. National Tube Works Co. v. Ballou, 146 U. S. 517; Pierstoff v. Jorges, 86 Wis. 128. It must be alleged in the bill when the execution was issued, when it was returnable and the actual return of the sheriff so the court can see that the remedy at law has been legally exhausted. Cassidy v. Meacham, 3 Paige Ch. 311. An allegation that an execution was then delivered to the sheriff following an averment as to the time of issuing the execution will be sufficient. Conant v. Sparks, 3 Edw. Ch. 104. It must be alleged that some of the judgment debtors resided in the county where the execution was issued. Wilbur v. Collier, Clark's Ch. 315. An allegation that the sheriff's return showed the defendants had no property, etc., shows a lack of individual as well as joint property. Conant v. Sparks, 3 Edw. Ch. 104. The complaint need not set forth in haec verba the sheriff's return. Doskam v. Neff, 79 Wis. 161. Where the answer admits that a judgment had been entered and execution issued thereon it is not competent for the defendant to show that no such judgment had been entered. Wanzer v. Howland, 10 Wis. 8.

Where a judgment, execution, return thereon and the amount thereof are not admitted in the answer they must be proved.[20]

The satisfaction and discharge of a judgment on which the bill is based is a proper defense,[21] and if a decree or judgment has been satisfied, set aside or reversed it is for the defendant to show it.[22]

(f) When it is necessary to show an exhaustion of legal remedies as a preliminary to the filing of the bill it is also necessary to show the issuing of an execution upon the judgment and a return thereof *nulla bona,* or at least not sufficient to satisfy the execution.[23]

Where the action is based upon a fraudulent conveyance by the debtor and the object is to reach the property so conveyed and apply the same in satisfaction of plaintiff's judgment, and it appears that the legal title has never been in the debtor but the property has been bought and paid for by him and the title taken in another, such property is not subject to levy and sale under an execution against the debtor, in the absence of a statute authorizing such proceeding. In such case the levy of an execution on the property preliminary to a creditor's bill being filed is of no virtue.

(g) It is a well known principle of remedial equity

[20] Where a judgment execution and return and the amount due are not admitted, they must be proved. Gauler v. Wohlers, 12 Ill. App. 594. On a creditor's bill seeking to set aside certain deeds as fraudulent as to creditors, it is held that matters not admitted in the answer must be proved just the same as if expressly denied. Clark v. Wilson, 127 Ill. 449.

[21] The satisfaction or discharge of a judgment may be shown as a defense against a creditor's bill. Bickerdike v. Allen, 157 Ill. 95.

[22] It is sufficient to prove the decree forming the basis of the creditor's suit to make out a prima facie case. If it has been reversed, satisfied or set aside it is for the defendant to prove it if he can. Weightman v. Hatch, 17 Ill. 281.

[23] Where the bill filed to reach certain lands not subject to execution shows that execution had been issued thereon and had been returned unsatisfied except as to a small amount on each it is sufficient. Manchester v. Mckee, 4 Gilm. 511; Beck v. Burdett, 1 Paige 305. This establishes a prima facie case, but probably subject to rebuttal. Id.

jurisprudence that the plaintiff on coming into a court of equity to ask for relief must occupy an attitude, so far as the subject matter of the litigation is concerned, free and clear of all taint or suspicion of fraud or wrongdoing in connection therewith.[24]

(h) Where the purpose of the bill is to reach property and assets which are unknown to the plaintiff, or which are concealed, the law is not so unreasonable as to require such accurate and definite description as might be required where the property is known and is capable of being described.[25]

(i) But where it is sought to reach debts due the debtor from non-residents they must be specifically described both as to their nature and as to the persons owing them. This rule is a necessity in order to protect the non-resident debtor.[26]

It would seem that where it is sought to reach the property of a non-resident it must be averred that service of process cannot be made.[27]

(j) A mere reference to the plaintiff as a creditor is not sufficient. There must be a direct allegation that plaintiff is a creditor, and if a fraudulent conveyance is

[24] Jones v. Warden, 1 Mackey (D. C.) 476; Bunce v. Bailey, 39 Mich. 192. The defendant who has filed a cross-bill is not entitled to affirmative relief if he has assisted in the proceedings complained of. Whiting v. Beebe, 12 Ark. 421.

[25] A judgment creditor's bill, filed to reach property or interests which are unknown to the complainant, and perhaps concealed, need not point out the property sought to be reached. Dutton v. Thomas, 97 Mich. 93; Clark v. Davis, Han. Ch. 227.

[26] Debts due a debtor from non-residents must be specifically described, both as to their nature and as to the persons owing them, in order to be reached by a proceeding in equity by a judgment creditor. A general assignment of all the property or of all the choses in action of a debtor cannot be compelled in Massachusetts by a court of equity, in a suit by a judgment creditor to collect his judgment. Amy v. Manning, 149 Mass. 487.

[27] A bill in equity to subject property of a non-resident which fails to aver that service of process cannot be made, is demurrable. Ginn v. Brown, 14 R. I. 524.

attacked he must allege that he was a creditor at the time.[28]

To impeach a deed as fraudulent two things must be averred and shown to entitle the plaintiff to recover: (1) that the deed was made to defraud creditors and (2) that the plaintiff was a creditor at the time of the conveyance.[29]

Where it is necessary to show that the grantee participated in the fraud under a bill to set aside a conveyance as fraudulent it need not be done by direct and positive evidence; it may be inferred from circumstances. Frequently the circumstances surrounding a transaction speak in stronger terms than the positive statements of the parties to the transaction.[30]

The fact that a conveyance was fraudulent as to creditors must be proved by a preponderance of the evidence as in all civil cases.[31]

The plaintiff must prove that the conveyance was made with the intent on the part of the grantor to put the property beyond the reach of creditors with whom he

[28] In a creditor's bill against a corporation, a mere reference to the plaintiff as creditor is not sufficient. There must be a specific averment in the bill itself, showing that the plaintiff has an interest in the subject matter of the suit. Holton v. Railway Co., 138 Pa. St. 111. A creditor's bill is defective if it does not show that the plaintiff was a creditor at the time of the alleged fraudulent conveyance. Uhre v. Melum, 17 Ill. App. 182; Moritz v. Hoffman, 35 Ill. 553; Koster v. Hiller, 4 Ill. App. 21.

[29] Shackleford v. Todhunter, 4 Ill. App. 271. It is a necessary averment that the plaintiff was a creditor when the alleged fraudulent conveyance was made. Merrel v. Johnson, 96 Ill. 224; Moritz v. Hoffman, 35 Ill. 553; Uhre v. Melum, 17 Ill. App. 182; Koster v. Hiller, 4 Ill. App. 21. Otherwise he would not be injured by the alleged fraudulent conveyance.

[30] On a bill to set aside a fraudulent conveyance direct and positive evidence that the grantee participated in the fraud is not required; it may be shown by circumstances from which it may be inferred. Youngs v. Sexton N. Bk., 59 Ill. App. 152; Treadwell v. McEwen, 123 Ill. 253.

[31] Under a creditor's bill the fraudulent conveyance must be shown by a preponderance of evidence. Young v. Stearns, 3 Ill. App. 498. The plaintiff assumes the burden of proof in case where it is alleged that judgments and claims against a debtor in favor of near relatives are fraudulent. Cameron v. Savage, 37 Ill. 172.

intended to contract debts and for the payment of which he had reasonable ground to believe and believed he would not be able to pay.[32]

Where a person applies for credit and refers to a third person for information, and such third person makes representations concerning property owned by the applicant for credit it is equivalent to a statement made by him in person. *Qui facit per alium facit per se.*[33]

Where the grantee has made admissions that the grantor owned certain land it will not operate as an estoppel until it is made to appear that the action was brought on the faith of such alleged admissions.[34]

(k) Where the statute prescribes a remedy based upon certain conditions or state of facts it is sufficient to frame the averments in the language of the statute.[35]

(l) The right of recovery depends upon subsisting facts at the time of the commencement of the suit, and not upon a state of facts that may subsequently exist.[36]

(m) Where a bill is filed to reach property in the

[32] Cunningham v. Williams, 42 Ark. 170.

[33] Hopkins v. Joyce, 78 Wis. 443.

[34] Where the grantee has made admissions that his grantor owned certain land it will not operate as an estoppel until it is made to appear that the action was brought on the faith of such alleged admissions. Conkey v. Hawthorne, 69 Wis. 199. Admissions that the land belonged to the grantor made by a grantee will overcome the evidence that there was a sufficient consideration for the land and that it was taken without any intention to hinder and delay creditors. Conkey v. Hawthorne, supra.

[35] Under the act of 1844, of Alabama, relating to the remedy of judgment creditors, it is permissible to allege in the bill the supposed interests of the defendant, in property, etc., in the general terms of the statute, either positively or in the alternative. Brown v. Bates, 10 Ala. 432. It need not be specially alleged that the execution which issued on the judgment at law, directed the amount to be made of the "land and tenements" of the defendant; the form of such writ prescribed by the statute authorizing the levy on and sale of the "lands," etc., will, in the absence of proof, be presumed to be regular. Brown v. Bates, supra.

[36] The bill is based upon a liability subsisting when the suit is commenced, and a decree can only be had when the facts subsisting at the commencement of the suit make out a case for equitable cognizance, and these facts must be alleged in the bill. Rives v. Walthall, 38 Ala. 329.

hands of a fraudulent grantee it is not necessary to allege a deficiency of the personal estate of the deceased debtor, if at the hearing the fraud is substantiated, and the personal assets are proven to be wasted or insufficient.[37]

(n) It is not essential to the sustaining of a creditor's bill as against property fraudulently conveyed that there shall be an allegation that the defendant has no other property liable to satisfy the plaintiff's judgment.[38]

(o) Where it is sought to reach property given by a husband to his wife, it is necessary in order to recover to allege and prove (1) that he was insolvent at the time or (2) that the gift rendered him unable to meet his legal obligations, and in the absence of proof it will not be presumed that other debts then existed.[39]

(p) But where facts and circumstances are alleged they may be of such nature and character as to warrant a presumption of insolvency.[40]

(q) The relation of debtor and creditor between a principal and his surety so as to enable the latter to avoid a fraudulent conveyance of the former commences at the date of the obligation of the surety—when he becomes bound—and not when he pays the debt, and the averments should be so framed.[41]

(r) The allegations of the bill and the proofs there-

[37] McLaughlin v. Bank of Potomac, 48 U. S. 220.

[38] The complaint must clearly show that the plaintiff has exhausted his legal remedies and been unable to collect his judgment, but it need not allege in addition that the debtor has no other property to satisfy the judgments than that described. Doskam v. Neff, 79 Wis. 161.

[39] Bittinger v. Kaston, 111 Ill. 260.

[40] A voluntary conveyance for the benefit of wife or a child of the grantor may be impeached by showing that plaintiff was a creditor at the time, that the grantor was insolvent, or such facts and circumstances as that insolvency would be presumed therefrom. Moritz v. Hoffman, 35 Ill. 553.

[41] Choteau v. Jones, 11 Ill. 300; Howe v. Ward, 4 Greenleaf 195; Thompson v. Thompson, 19 Me. 244; Carlisle v. Rich, 8 N. H. 44. A surety cannot ask the aid of a court of equity against the debtor or a creditor until his debt is due. Hinckley v. Pfister, 83 Wis. 64.

under must correspond with each other. The case made by the evidence must sustain the case made by the bill. Where the allegation of fraud made by the bill consists in an alleged fraudulent conveyance, without consideration, from a husband to his wife for the purpose of defrauding creditors, it is not sustained by proof of an unlawful preference made in violation of a voluntary assignment act.[42]

If the plaintiff in chancery can recover at all it must be upon the case made by the bill. He will not be permitted to recover upon one case made by the bill and another made by the proof. This would work an injustice to the defendant. According to the usually prevailing practice the bill must be amended.[43]

(s) Whether a bill contains such averments as are required by the rules of court cannot be raised for the first time on appeal.[44]

(t) The consideration of the debt is a matter that need not be alleged in the bill. That matter became *res adjudicata* with the rendition of the judgment and if it were otherwise the subject matter thereof could not be reached in a collateral proceeding as elsewhere seen.[45]

[42] Coale v. Moline Plow Co., 134 Ill. 350. On a bill to set aside a trust deed and a deed made thereunder on the ground that the same was fraudulent as to creditors, the complainant cannot take advantage of the fact that the notice of the trustee's sale was in violation of the statute in not setting forth the amount due, no such allegation being made in the bill. Sawyer v. Bradshaw, 125 Ill. 440.

[43] Coale v. Moline Plow Co., 134 Ill. 350. In this case the allegation of the bill was that a conveyance from a husband to his wife was fraudulent and void as to creditors and the proof was that this deed was preferential as to creditors in contravention of the voluntary assignment act. A creditors' bill brought by an administrator will not be held to have been improperly brought because the judgment on which the action was based was entered in the name of the original plaintiff after the administrator was substituted as plaintiff, where an order nunc pro tunc was made after the commencement of the action, correcting the mistake. Hunt v. Johnston, 105 Ia. 311.

[44] Schuerman v. Matthews, 78 Wis. 309.

[45] Curry v. Glass, 25 N. J. Eq. 108.

(u) In order to sustain a suit against the heirs of a deceased partner to subject real estate descended to them from the father it should be averred that the surviving partner is insolvent and that the debt could not be made in the ordinary course of administration.[46]

(v) Where it is sought to reach a deceased debtor's interest in an estate devised to him which is subject to a life estate in a third person who is still alive it must be shown that his personalty is insufficient, and that he was the owner of such estate in remainder.[47]

(w) Where suit is brought to set aside a foreclosure sale under a prior mortgage it is not necessary to allege that the premises are worth more than the mortgage.[48]

§ **104. Abatement.**—(a) Where a suit is brought by one creditor for all creditors it cannot be pleaded in abatement or in bar of a subsequent suit by a different creditor in a different right until a decree has been rendered in the former suit.[49]

(b) Where the suit is based upon a judgment the payment of the judgment operates as an abatement of the

[46] Garvin v. Stewart's Heirs, 59 Ill. 229. This would not probably be the rule if it was necessary to settle the conflicting rights and equities of all parties and thus prevent a multiplicity of suits at law. Id. Vansyckle v. Richardson, 13 Ill. 171.

[47] A deceased debtor's interest in real estate devised to him, subject to a life estate in a third person still living, may be sold for the payment of his debts, where his personalty is insufficient, and an averment of such an estate, and such insufficiency is sufficient to entitle the complainant to a decree for the sale of such estate, when the indebtedness to him is admitted by the answer. Robertson v. Parks, 3 Md. Ch. 65. A creditors' bill to discover assets and to enforce a claim against an estate, real and personal, in the hands of heirs or devisees, is not demurrable because filed within the six months after the appointment of the personal representative of the debtor's estate, given by W. Va. Code, Ch. 86, Sec. 7. Poling v. Huffman, 39 W. Va. 320.

[48] Swain v. Lynd, (Minn.) 76 N. W. 958.

[49] Sweeney Mfg. Co. v. Goldberg, 66 Ill. App. 568; 1 Daniel Ch. Pl. & Pr. 35, 794; Macey v. Childress, 2 Tenn. Ch. 23; Moore v. Holt, 3 Tenn. Ch. 141; Innes v. Lansing, 7 Paige Ch. 583; Rogers v. King, 8 Paige Ch. 210. They may be consolidated, however, on a proper motion. Russell v. Chicago Tr. & S. Bk., 139 Ill. 538.

equitable action. Payment may also be shown as a defense to the suit.[50]

(c) And so where subsequent to the filing of a creditors' bill to reach several pieces of land a mortgage is foreclosed against one of the pieces and the title taken in the plaintiff and subsequently conveyed to the alleged fraudulent grantee who pays therefor there must be an abatement as to such piece.[51]

(d) Where no levy has been made and the property has not been taken into possession or control by the court the death of the judgment debtor has been held to be a suspension of the suit.[52]

§ **105. Verification.**—Under a creditor's bill where an injunction is prayed for or a receiver is to be appointed the bill should be sworn to. Frequently the verification of the bill or petition is required by the statute or code.[53]

§ **106. Prayer of Bill or Petition.**—The bill should pray for the specific relief which the case made by the bill entitles the plaintiff to have, but under a prayer for general relief the plaintiff may have such special relief as is consistent with the case made by the bill. If the par-

[50] Zweig v. Honicon Iron & Mfg. Co., 17 Wis. 362. The satisfaction or discharge of a judgment may be shown as a defense against a creditors' bill to enforce the judgment after revival on scire facias, as well as to defeat the revival. Bickerdike v. Allen, 157 Ill. 95.

[51] Shawano Co. Bank v. Koeppen, 78 Wis. 533.

[52] The right to prosecute a creditor's bill is suspended by the death of the judgment debtor, where no levy has been made and the property has not been taken into possession or control by the court. Beith v. Porter, 5 Det. L. N. 837, 78 N. W. 336.

[53] Brabrook, etc., Co. v. Belding Bros., 40 Ill. App. 326; Siegmund v. Ascher, 37 Ill. App. 122. As to sufficiency of verification see Siegmund v. Ascher, 37 Ill. App. 122; Brabrook, etc., Co. v. Belding Bros., 40 Ill. App. 326; Deimel v. Brown, 35 Ill. App. 303; Heffron v. Rice, 40 Ill. App. 244; Sterlen v. Neustadt, 50 Ill. App. 378; Reboul's Heirs v. Behrens, 5 La. 79; Catlett v. McDonald, 13 La. 45; Daniel's Ch. Pr. 2170; Barbour's Ch. Pr., Vol. 1, p. 44, 144. Unless waived the insufficiency of the verification can be raised at any time. Brabrook, etc., Co. v. Belding Bros., supra.

ticular relief to be granted is doubtful it is frequently expedient to ask for alternative relief.[54]

§ 107. Plaintiff has Right to Control Litigation. —The plaintiff who has filed a creditor's bill has a right to control the litigation as against an intervening petitioner who has not been made a co-complainant by leave of court, or one who has not obtained in his own behalf a special order for the examination of the defendant against whom the bill is filed.[55]

§ 108. Lis Pendens—When Commences, Etc., Theory of. — The commencement of a suit by the filing of a bill does not operate as a *lis pendens* until service has been had upon the party in interest.[56]

To have the effect of a *lis pendens* the bill must describe specific property with such a degree of definiteness and certainty that a person reading the bill will know therefrom what property is embraced in the litigation.[57]

The theory of the doctrine of *lis pendens* is to preserve the situation of the parties as it exists at the time the suit is begun so that the successful party may have at the end of the litigation the fruits thereof. It would be an establishment of the impotency of remedial jurisprudence if at the end of a protracted litigation, in which the plaintiff was successful, the property sought to be reached was found to have passed to another not a party to the suit and beyond the control of the court.[58]

[54] Miller v. Jamison, 24 N. J. Eq. 41. A creditors' bill may pray in the alternative that an instrument be deemed a common-law assignment for all creditors, or, if it be deemed a chattel mortgage, that foreclosure proceedings instituted by the trustee be adjudged collusive and the appointment of a receiver therein be vacated. Albion Malleable Iron Co. v. First Nat. Bank, 4 Det. L. N. 1147, 74 N. W. 515.

[55] Cane v. Dernberg (Ill. C. C.) 12 Nat. Corp. Rep. 260.

[56] Hallorn v. Trum, 125 Ill. 247.

[57] Brown v. Farwell, 74 Fed. Rep. 764; Griffith v. Griffith, 9 Paige, 315; Cf. Leitch v. Wells, 48 N. Y. 585.

[58] Hovey v. Elliott, 118 N. Y. 124; Tilton v. Cofield, 93 U. S. 163; Lamont v. Cheshire, 65 N.

§ **109. The Answer—Frame of.**—The answer of the debtor defendant should be as specific and definite as required in the bill, and in general is shaped by the scope of the bill. A few general rules may be of interest, though they must be understood with reference to local procedure.

First. The answer must be direct and without evasion to so much and such parts of the bill as are material and necessary to be answered. He must confess or traverse the substance of each charge positively and with certainty. Particular and precise charges in the bill must be followed by particular and precise answers. If particular charges of fraud are made a general answer will not be sufficient.[59]

Second. The answer must be consistent in all its parts. One part must not contradict another, and where fraud is charged in the bill and denied in the answer and facts are alleged in the answer or admitted from which fraud may be presumed as a legal conclusion the answer will not prevail.

§ **110. Answer — Scope of.** — Under the Chancery practice where unmodified by statute the answer under oath may be waived, in which case it is not to be considered as evidence even if sworn to. If the oath, however, is not waived the answer is to be taken as true unless overcome by the evidence of two witnesses, or by one witness and such corroborating circumstances as will be equal to another witness. It is not designed herein, in fact, it would serve no useful purpose, to enter into an examination of the practice as modified by

Y. 30; Bishop, etc. v. Paine, 11 Ves. 194; Bellamy v. Sabine, 1 De Gex. & J. 566; Murray v. Lylburn, 2 Johns. Ch. 441; Gurkill v. Durdin, 2 Ball & Beatty, 167; Hayden v. Bucklin, 9 Paige, 513; Hovey v. Hill, 3 Lans. 167.

[59] If the answer is defective or evasive it is ground of exception but not an implicit conclusion against the defendant. Blaisdell v. Stevens, 16 Vt. 179; Phillips v. Overton, 4 Hey. 291. The answer and proof must correspond. Dowden v. Wilson, 108 Ill. 257.

the statutes and codes of the several states, the intention being to simply call attention to a few of the general and elementary principles which apply to this branch of equity practice in their application to the defense usually made through the instrumentality of an answer or plea. The scope and nature of the answer must, of course, in all cases, be governed by the defense sought to be interposed, and the defense by the several defendants will, of necessity, vary with the attitude sustained by each respectively to the allegations of the bill. The answer should, in all cases, whether sworn to or not, be directly responsive to the bill and should admit or deny the averments of fact therein stated, in so far as they are material and necessary. The defendant has a right to demand that all material averments of fact in the bill shall be clearly stated, so that a direct issue may be taken thereon, and plaintiff has an equal right to have such averments answered directly and without evasion, either by an admission or denial. Of course, an answer to be a complete defense must often embrace other matters than a mere denial of the allegations of the bill. Counter facts may frequently be directly responsive to the case made by the bill and conclusively negative the plaintiff's right of recovery. Fraud may be made out by detailed facts and circumstances alleged in the bill, and as conclusively disproved by other facts and explanatory circumstances embraced in the answer. A perfect right of recovery may be established by proper averments as to the recovery of a judgment, execution issued and return thereof *nulla bona,* and a fraudulent transfer, and yet the judgment may have been paid, or the plaintiff have participated in the fraud, or the property sought to be reached taken by and absorbed under a prior lien.[60]

[60] Particular and precise charges in the bill must be answered by particular and positive allegations in the answer.

The rules applicable to the bill in matters of fraud are as strict when applied to the answer.[61]

§ 111. Answer, When Under Oath.—Unless the oath to the answer is waived the answer must be under oath, and where the oath is waived the answer under oath is to be regarded simply as a pleading, and is not to be used as evidence. It is frequently expedient to file a sworn answer, even if not required, in order that it may be used in matters pertaining to interlocutory orders, and other proceedings pending the litigation.

Woods v. Morrell, 1 Johns. Ch. 103; Stacy v. Randall, 17 Ill. 467; Parkinson v. Truesdale, 3 Scam. 369; Taylor v. Luther, 2 Sumner, 228. The answer must positively and directly deny all material allegations of the bill. Taylor v. Luther, 2 Sumner 228; Pettit v. Candler, 3 Wend. 618. An answer not responsive to anything contained in the bill cannot benefit the defendant. Wakeman v. Grover, 4 Paige Ch. 23. It is an established rule in equity that where an answer which is put in issue admits a fact and insists on a distinct fact by way of avoidance the fact admitted is established but the fact insisted upon must be proved; otherwise the admission stands as if the fact in avoidance had not been averred. Clements v. Moore, 73 U. S. (6 Wall.) 299, 315; McDonald v. McDonald, 16 Vt. 630. Where the defendant admits a fact and insists on another fact distinct from the first by way of avoidance he must prove it. Hart v. Ten Eyck, 2 Johns. Ch. 62, 89.

[61] A positive denial of fraud in an answer will not prevail against admissions in the same pleading of facts which show that the transaction was fraudulent. Robinson v. Stewart, 10 N. Y. 189; Jackson v. Hart, 11 Wend. 343. A denial by the answer of the existence of fraud will not avail to disprove it when the answer admits facts from which fraud follows as a natural and legal, if not a necessary and unavoidable conclusion. Hoboken Bk. v. Beckman, 33 N. J. Eq. 53; Cf. Sayre v. Fredericks, 16 N. J. Eq. 205. In weighing the whole evidence in the case the fact that the defendant only answers generally denying the fraud will operate against him whenever the bill charges him with particular acts of fraud. The circumstance that the defendant omits to deny the facts in the same explicit manner that they are charged raises the presumption that the appeal to his conscience has been somewhat effectual, and that he proposes shielding himself under a denial of the legal effect of his actions, rather than to deny under oath the particular acts imputed to him. Parkman v. Welch, 19 Pick. 231. Although the answer denies the fraud it nevertheless admits facts from which the existence of fraud follows as a natural and legal conclusion. Sayre v. Fredericks, 16 N. J. Eq. 205. A general denial of fraud when particular acts are set forth in the bill is not sufficient. Fellows v. Fellows, 4 Cow. 682; Bailey v. Wright, 2 Bond 181.

Where the oath is waived it is error to dismiss the bill for want of equity on motion of the defendant.[62]

Where an answer is required to be under oath, and is sworn to, and the facts are within the knowledge of the defendant, it must be overcome by evidence equivalent to two witnesses. This rule, however, only applies to so much of the answer as is responsive to the allegations of the bill, and not to new matter not responsive.[63]

§ **112. Answer Usually in Two Parts.**—The answer generally admits or denies all the material allegations contained in the bill or petition whether they be facts or circumstances. Generally speaking, the answer consists of two parts (1), an admission or denial of the case as made by the plaintiff, and (2) alleges such additional facts and circumstances in answer to the bill or petition as will constitute a defense to the suit. Under the chancery practice certain defenses are made by way of plea, and sometimes by plea and answer.

§ **113. Insufficiency of Answer.** — (a) A general allegation in an answer that the defendant had property liable to execution and which might have been levied upon by the sheriff is not a sufficient answer to a creditor's bill. The answer must show where the property is situated and what it consists of. The *prima facie* case made by the officer's return *nulla bona* is not overcome by a general allegation of property liable to the execution. Besides, a general allegation of this nature is not good pleading in any case.[64]

[62] Heisler v. Dickinson, 17 Ill. App. 193.

[63] It is only when the defendant states facts within his knowledge that his sworn answer must be overcome by the evidence equivalent to two witnesses. New matter set forth in the answer not responsive to the allegations of the bill is not evidence for the defendant. Atkinson v. Foster, 134 Ill. 472; Fayrear v. Lawrence, 5 Gilm. 325; Hitt v. Ormsbee, 14 Ill. 233.

[64] Rankin v. Rothschild, 78 Mich. 10. An answer that the defendant has no property is not a full defense, nor is it a reason why a receiver should not be appointed. Fitzburgh v. Everingham, 6 Paige Ch. 29. It is a good defense that the defend-

The answer of a defendant to a bill to compel discovery of any property of any kind to satisfy an execution and to prevent the transfer thereof, that he has no property will not prevent an order referring the cause to a master and directing the delivery of his property and effects to a receiver.[65]

The sufficiency of an answer to the case made by the bill must of necessity rest upon the particular features of each individual case and no rules can be laid down that will be of general utility.[66]

(b) Nor will the debtor be permitted to show that he had property liable to the execution as an answer to a creditor's bill when he, on demand of the officer, for property or money to satisfy the execution, informed the officer that he had no money or property. The doctrine of estoppel applies in such cases.[67]

(c) It is not always easy to determine the line which marks a sufficient and insufficient answer. If an answer is not sufficiently specific it should be excepted to and the insufficiencies pointed out, and if this is not done the answer will be sustained, as where property was conveyed by the debtor to his wife by several

ant had property liable to execution which was not levied on by the officer by reason of collusion between plaintiff and the officer. Storm v. Badger, 8 Paige Ch. 130.

[65] Fuller v. Taylor, 6 N. J. Eq. (2 Hals.) 301.

[66] If the bill requires the defendant to state the situation of his property and effects at the time of filing the bill, and the defendant answers that at the time of the rendition of the plaintiff's judgment, he had no interest in any property, and that he had not had at any time since, it is a sufficient answer. Wendell v. Shaw, 1 Barb. (N. Y.) 462. Compare Brown v. Morgan, 3 Edw. (N. Y.) 278; Brownell, v. Curtis, 10 Paige (N. Y.) 210. A creditor's bill alleged that the defendant had some interest in some real estate, etc. An answer alleging that the defendant had not some interest in some real estate, etc., was held to be sufficient. Batterson v. Ferguson, 1 Barb. (N. Y.) 490.

[67] A debtor who on demand of the officer informed him that he had no property or money to apply on the execution, will not be permitted on the filing of a creditor's bill against him, to defeat the bill by showing that he had property. Lewis v. Lanphere, 79 Ill. 187.

transfers and she answered under oath denying that the transfers were made to hinder or defraud creditors of her husband, or of the firms to which he belonged, or to shield property from creditors, and averring that at the time of the several transfers she believed her husband and the firms to which he belonged to be solvent.[68]

Since parties are permitted by law to testify, the practice in courts of chancery of excepting to an answer where discovery is sought has become well nigh obsolete, where the purpose is purely for discovery in aid of a suit at law. But the law permitting parties to testify does not repeal the law giving chancery courts power to compel a discovery in suit by judgment creditors.[69]

(d) It is not a sufficient answer for an alleged fraudulent grantee to set up a defense to a creditor's suit that might have been interposed in the suit in which the judgment was rendered, which forms the basis of the creditor's bill. All matters of this nature by the judgment become *res adjudicata*.[70]

(e) And where the bill is based upon a legal de-

[68] A judgment creditor's bill, filed to reach property acquired by the debtor's wife under various transfers made by him, called for answers under oath. The wife denied that any of the transfers made were to hinder or defraud creditors of her husband or of the firms to which he belonged, or to shield any of his property, and averred that at the time of the conveyances she believed her husband and the firms to be solvent. The answer was held responsive, and not being excepted to was sustained, though it would have been well to have set forth in detail all circumstances connected with the transfers made. Hubbell v. Grant, 39 Mich. 641. A complainant is not entitled to file exceptions to the voluntary answer of a corporation officer to a judgment creditor's bill, especially when the answer contains an express denial of the charges made in the bill. McCreery v. Cobb, 93 Mich. 463.

[69] McCreery v. Cobb, 93 Mich. 463; Hubbard v. McNaughton, 43 Mich. 220; Turnbull v. Lumber Co., 55 Mich., 387; but see Riopelle v. Doellner, 26 Mich. 102; Sheldon v. Walbridge, 44 Mich. 251. A complainant is not entitled to file exceptions to the voluntary answer of a corporation officer to a judgment creditor's bill, especially when the answer contains no express denial of the charges made in the bill. McCreery v. Circuit Judge, supra.

[70] Davidson v. Burke, 143 Ill. 139.

mand, and the suit is properly instituted, it is not a proper or sufficient answer that the plaintiff is actuated by personal and improper motives. His motives other than shown by the bill are immaterial.[71]

(f) It is not a sufficient defense to a creditor's bill that the results of replevin suits by third persons involving the ownership of personal property previously levied upon had not been determined; nor is the fact that a previous levy had been made upon an equity of redemption which expired before a sale could be made.[72]

(g) Nor is the pendency of another suit between the same parties where the prosecution of the two suits works no inconvenience,[73] nor is the pending of an action at law upon the same indebtedness.[74]

(h) Nor is it a defense that the assignee of a debtor corporation and creditors whose claims were allowed in insolvency proceedings are entitled to priority where they were given an opportunity to join in the litigation and neglected to do so and the assignee's accounts have been settled, in a proceeding to reach a debt due the corporation.[75]

(i) Where proceedings in equity are instituted upon a judgment before a justice of the peace it is not a sufficient answer that an appeal was taken on the judgment and not prosecuted for four years. This evidently would not be so if the effect of the appeal operated to dissolve the judgment. The better view would seem to be to regard the judgment as still subsisting and the appeal as only suspending all further proceedings.[76]

(j) An answer is not traversable where it fails to

[71] McMullen v. Ritchie (C. C. N. D. Ohio) 64 Fed. Rep. 253.

[72] Marshall Bank v. Hosmer, 48 Mich. 200.

[73] Carlton v. Felder, 6 Rich. (S. C.) Eq. 58.

[74] Anderson v. Newman, 60 Miss. 532.

[75] Johnson v. Blell, 1 Mo. App. Rep. 291.

[76] Warder v. Rivers, 64 Iowa, 412.

disclose assets and denies their possession, and the court will proceed to try the traverse and grant relief in case the defendant is found in possession of assets.[77]

(k) Mere irregularity in the return day of the execution being amendable is no defense.[78]

(l) Nor is a defense to the demand on which the judgment was rendered.[79]

(m) A denial of fraud in the answer will be of no avail where it admits facts from which fraud is to be inferred as a natural and legal, if not a necessary and unavoidable conclusion.[80]

(n) The defense that plaintiff assigned all his interest in the subject matter of the suit before the bill was filed if not raised by plea or answer will be treated as waived.[81]

§ **114. Demurrer.**—Whenever any ground of defense is apparent on the face of the bill, either from matters therein stated or from defects in its frame, or in the case made by it, the proper mode of defense is by demurrer. The demurrer is in bar of the relief sought and is based upon the ground that, admitting the facts stated in the bill to be true, plaintiff is not entitled to the relief he asks, but it admits only that which is well stated or pleaded.[82]

[77] The answer to a creditor's bill is not traversable where it fails to disclose assets and denies their possession, and the court will proceed to try the traverse and grant relief in case the defendant is found in possession of assets. United States Ins. Co. v. Central Nat. Bk., 7 Ill. App. 426.

[78] Mere irregularity of the return day is no defense, because it being voidable may be amended. Williams v. Hageboom, 8 Paige 469; Storm v. Waddell, 2 Sandf. Ch. 494.

[79] A defense to the demand on which the judgment was rendered is not available in the creditor's suit. Storm v. Waddell, 2 Sandf. Ch. 494. But it may be shown that a writ of error has been sued out on the judgment. Smith v. Crocheron, 2 Edw. Ch. 501.

[80] Sayre v. Fredericks, 16 N. J. Eq. 205.

[81] Hathaway v. Scott, 11 Paige (N. Y.) 173.

[82] Galatian v. Erwin, Hopk. Ch. 48; Johnson v. Roberts, 102 Ill. 655; Crerar v. Williams, 145 Ill. 625; Lawrence v. Traner, 136 Ill. 474; Greig v. Russell,

If a demurrer is overruled and the defendant declines to answer over he thereby admits the allegations of the bill to be true.[83]

§ **115. Cross-Bill or Petition.** — The general rule is that the defendant is not entitled to affirmative relief on an answer, and must obtain such relief on a cross-bill or in a cross action. The necessity for a cross-bill or a petition in a proceeding of this nature rarely occurs, but when it does the practice in relation thereto is governed by the prevailing practice in other actions and proceedings.

A person interested as a legatee in land sought to be reached by a creditor's bill has a right to file a cross-bill to have the judgment which forms the basis of the original bill set aside as fraudulent.[84]

§ **116. Supplemental Bill or Petition.**—Where the property acquired by a debtor subsequent to the filing of the original bill is subject to the payment of plaintiff's claim or the claims of creditors generally, it may be reached by a supplemental bill.[85]

And so where a note and collateral were given after

115 Ill. 483; Roby v. Cossitt, 78 Ill. 638; Harris v. Cornell, 80 Ill. 54; Dunham v. Hyde Park, 75 Ill. 371; Newell v. Supervisors, 37 Ill. 253; Stow v. Russell, 36 Ill. 18; Moore v. Hoisington, 31 Ill. 243. The practice of demurring to a bill or petition is not commendable unless the result may terminate the proceeding. The liberality of courts in permitting amendments renders the filing of a demurrer not only useless, as a general rule, but results to the advantage of the plaintiff rather than defendant.

[83] Miller v. Davidson, 3 Gilm. 518.

[84] On a bill by a creditor based on a claim allowed against an estate to reach lands alleged to have been fraudulently conveyed, the widow of the deceased who is administratrix and sole legatee, and who is a necessary party and has an interest, has a right to file a cross-bill to have the judgment set aside as fraudulent. Higgins v. Curtiss, 82 Ill. 28.

[85] A supplemental bill is required to reach property acquired after the filing of the original bill. Hope v. Brinckerhoff, 4 Edw. Ch. 348; Thomas v. McEwen, 11 Paige Ch. 131. A supplemental bill based on a valid judgment in a proceeding where the original bill is based on judgments afterwards set aside, goes down with the original bill. Butchers, etc., Bk. v. Willis, 1 Edw. Ch. 645.

the filing of the original bill, but the note was not paid and a judgment obtained thereon, these facts may properly be set up in a supplemental bill.[86]

§ 117. The Decree, General Nature of Relief.—(a) The decree to be rendered must, of course, be adapted to the rights and equities of the parties as alleged and shown in each particular case, and no well-defined rules of general application can be laid down. A court of equity in all cases adapts its relief to the case in hand. It may restrain or compel the defendant; it may appoint a receiver or compel an accounting; it may order a specific performance or the delivery of personal or real property, or give a personal decree or judgment in favor of the plaintiff.[87]

(b) As a general rule the decree should conform to the relief demanded or such relief as the facts and circumstances show the plaintiff to be entitled to under a general prayer. The nature of equity procedure and practice as now administered is such that relief will frequently be granted though the plaintiff may have been mistaken in the specific relief he was entitled to.[88]

(c) But the relief, whatever it may me, must be in harmony with the allegations of the bill, thus if the bill is based upon fraud alleged fraud must be proved in order to obtain relief. It would be manifestly unjust under an allegation fraud to permit relief to be granted under proof of facts and circumstances that might be sufficient ground for relief under another branch of equity jurisprudence; nor will a charge of actual fraud

[86] Winslow v. Pitkin, 1 Barb. Ch. 402.

[87] Murtha v. Curley, 90 N. Y. 372; Valentine v. Richardt, 126 N. Y. 272; Bell v. Merrifield, 109 N. Y. 202. A court of equity will adapt the relief to case made out by the pleadings and evidence. Van Rensselaer v. Van Rensselaer, 113 N. Y. 207; Valentine v. Richardt, 126 N. Y. 272; Murtha v. Curley, supra.

[88] Buswell v. Lincks, 8 Daly 518.

be supported by proof amounting to only constructive fraud.[89]

It is a familiar rule in chancery practice that no relief will be granted which is not warranted by the general scope of the pleadings.[90]

(d) In a decree in a case where real and personal property have been fraudulently conveyed to another with power to sell and dispose of the same, and pay such creditors as the grantee may be able to make terms with, the grantee is properly chargeable with such amounts as he may have received from the sales of property and from collections, giving him credit for such payments to creditors as he may have made, and also charge him with such encumbrances as he may have made upon the property for the purpose of paying his own debts, or otherwise converted to his own use.[91]

The fraudulent grantee may be held for notes and accounts which came into his hands which might have been collected by ordinary diligence.[92]

If a fraudulent grantee holds in his hands property or money belonging to his grantor he cannot be heard to object to a decree because it finds him liable to joint as well as individual creditors of the grantor, as he has no interest in the question whether the sum for which he is liable shall be paid to one set of creditors or another.[93]

Where the grantee receives property knowing that the owner was intending to place it beyond the reach of creditors a court of equity will follow it into the hands

[89] Clark v. Krause, 2 Mackey 559; Fisher v. Boody, 1 Curtis C. C. 206.

[90] Pinneo v. Goodspeed, 104 Ill. 184.

[91] Dilworth v. Curts, 139 Ill. 508.

[92] Dilworth v. Curts, 139 Ill. 508. He must use due diligence to collect and will be held responsible if he does not.

[93] Dilworth v. Curts, 139 Ill. 508.

of such grantee, and by its decree subject the property to the payment of the grantor's debts.[94]

(e) The fact that the creditors in a creditor's bill seek to follow the fraudulently conveyed property instead of taking a personal decree against the fraudulent grantee will not preclude them after the decree has been reversed from taking a different course and taking such a decree as the facts and evidence in the case on a final hearing may warrant.[95]

If a fraudulent grantee sells or mortgages the property to a *bona fide* purchaser or mortgagee, the grantee will be decreed to be liable for the value of the property so received and sold, or for the money received by him on the mortgage, and this without reference to the use made of the money, unless its use inured to the benefit of the creditor.[96]

The fraudulent grantee is not permitted to insist that priority be given to the plaintiff as a creditor by the decree.[97]

(f) The court has a right to render a personal decree against a fraudulent grantee where he has converted the property to his own use or encumbered the same for his own benefit. While a personal decree is proper against the debtor, it is not as to those who are not guilty of fraud.[98]

(g) A decree for interest is properly computed on the judgments which form the basis of a creditor's bill and not upon a former decree which has been reversed.[99]

[94] Coale v. Moline Plow Co., 134 Ill. 350.

[95] Dilworth v. Curts, 139 Ill. 508.

[96] Coale v. Moline Plow Co., 134 Ill. 350.

[97] Coale v. Moline Plow Co., 134 Ill. 350.

[98] Dilworth v. Curts, 139 Ill. 508; Phelps v. Curts, 38 Ill. App. 93; Clements v. Moore, 6 Wall. 299. There is no ground for the rendition of an ordinary judgment against the transferee, where it is not averred that he has encumbered or conveyed the property. First Nat. Bk. v. Gibson, (Neb.) 77 N. W. 662.

[99] Dilworth v. Curts, 139 Ill. 508.

(h) A decree which finds the amount due the several judgment creditors, which is affirmed on appeal though reversed as to other matters, is conclusive on the parties as to the amounts.[1]

(i) Where the court acquires jurisdiction of the parties to a creditor's bill by service or by appearance, its decree will not be void for want of jurisdiction though based upon insufficient evidence, or upon a judgment of the federal court. At most the entry of a decree on insufficient evidence of indebtedness is but an error not affecting the jurisdiction of the court.[2]

(j) Where the suit is to charge lands conveyed by the defendant and held in trust for him, the decree may charge the lands with the amount of plaintiff's judgment, but not for the amount of promissory notes of the defendant held by the plaintiff, on which no judgment has been rendered.[3]

(k) Where the bill and proceedings specify the land a decree for the sale of the land mentioned in the bill or proceedings is sufficiently certain.[4]

(l) Where a decree cancels a deed and a trust deed as fraudulent as to creditors, it may direct the court to enter the facts on the margin of the proper record books.[5]

(m) The decree should not direct a surrender of possession prior to a confirmation of the sale ordered by the decree in a proceeding to set aside a transfer as fraudulent.[6]

(n) Where a decree is entered setting aside a sale as fraudulent as to creditors and directing a sale by the receiver, the error, if any, in directing such sale is not

[1] Dilworth v. Curts, 139 Ill. 508.

[2] Dilworth v. Curts, 139 Ill. 508; Bush v. Hanson, 70 Ill. 480.

[3] Claflin v. French, 28 N. J. Eq. 383.

[4] 1877, Barger v. Buckland, 28 Gratt. 850.

[5] Jones v. Porter, 59 Miss. 628.

[6] Adler v. Meyer, 73 Miss. 863.

ground for appeal, but must be corrected on motion, where the matter complained of is merely of detail and not affecting the decision of the cause upon its merits.[7]

(o) Under the original chancery practice the defendant was required to make an assignment to a receiver of his property, but an assignment is not considered necessary now.[8]

(p) If the court has jurisdiction of the parties and of the subject matter, and has legal authority to make the order, it must be obeyed though improvidently or erroneously made.[9]

(q) A decree that is absolutely void is open to attack, directly or collaterally, whenever and wherever an attempt is made to set it up as a basis of a right of action.[10]

(r) Where by a decree against grantor and grantee the land sought to be conveyed was misdescribed and in consequence the title remained in the grantor, it will pass to an assignee for the benefit of creditors, and the decree must direct the sale subject to the assignee's rights, he not being a party to the suit.[11]

(s) Where an administrator has money in his hands due an estate on account of property purchased of the

[7] An error in a decree in setting aside a conveyance must be rectified on motion and is not ground for appeal. Cole v. Tyler, 65 N. Y. 73. In this case the order directed the receiver to sell where no conveyance to him had been made.

[8] Under the former practice the defendant was required to attend before a master and assign to a receiver the property liable for the payment of the judgment. Browning v. Bettis, 8 Paige Ch. 568.

[9] A party cannot be guilty of contempt in disobeying an order the court had no authority to make. Want of authority, however, must not be confounded with mere irregularity in the exercise of power. If the court has jurisdiction of the parties and of the subject matter and legal authority to make the order it must be obeyed though improvidentially or erroneously made. Leopold v. The People, 140 Ill. 552; Cape May, etc., R. Co. v. Johnson, 35 N. J. Eq. 422; Mayor, etc. v. Conover, 5 Abb. Pr. 244; Tolman v. Jones, 114 Ill. 147; People v. Weigley, 155 Ill. 491; Buckmaster v. Carlin, 3 Scam. 104.

[10] People v. Weigley, 155 Ill. 491; Buckmaster v. Carlin, 3 Scam. 104.

[11] Coale v. Moline Plow Co., 134 Ill. 350.

intestate in his lifetime he may be decreed to pay the money into court or to a receiver, although he may be one of the next of kin.[12]

(t) Where a fraudulent conveyance includes a homestead and the deed is declared fraudulent as to creditors and a decree of sale entered, it is proper to direct that the homestead be set off to the debtor and the decree should so order.[13]

Where a homestead has been set apart and there is not sufficient unexempt property remaining to pay the debts all creditors share ratably in such property, and then such creditors to whom the homestead has been waived must secure satisfaction, if at all, out of the homestead property for the unpaid balance.[14]

(u) The court will not only by its decree adjust and declare the rights of the parties as between plaintiff and defendant, but will also adjust the rights of the plaintiffs as to each other; thus where the plaintiff has by his suit and compromise subjected part of the debtor's property to the payment of his judgment and released other property, other creditors must resort to the property released in the first instance.[15]

The decree should settle the liens and priorities

[12] Farmer v. Yates, 23 Gratt. 145.

[13] Quinn v. People, 146 Ill. 275.

[14] Scott v. Cheatham, 78 Va. 82. As to the distribution of the funds recovered by a creditor's bill, in a case involving the relative priority of holders of judgments recovered before and after commencing suit, and creditors at large see Wallace v. Treakle, 27 Gratt. (Va.) 479. The general rule that when a debtor has sold a portion of his land on which a judgment against him is a lien, the judgment creditor must exhaust the unsold portion first, but this rule does not apply when it will do injustice to the creditor. 1877, Jackson v. Sloan, 76 N. C. 306.

[15] If a creditor by suit and a compromise verdict subjects a part of the debtor's property to his judgment, relinquishing the rest as a part of the compromise, other creditors must look first to the part relinquished, it being equally accessible to them. Sims v. Albea, 72 Ga. 751. Where a debtor conveyed two tracts of land to secure two of his creditors and subsequently releases his right of homestead to one of them and gives him personal property besides the latter must first look to the personalty. Parr v. Fumbanks, 11 Lea. 391.

of all parties entitled to participate, and generally it is error to direct a sale until this has been done. But where all the debtor's property is required he is not prejudiced by the manner in which the debts and liabilities have been stated.[16]

(v) Where creditors are entitled to share *pro rata* in the distribution they are entitled to so share though they do not come in until after the rendition of an interlocutory decree establishing the right to relief.[17]

(w) If creditors do not come in in some way and establish their judgments in the case they are not entitled to share in the distribution, and the proceeds may be awarded to the plaintiff or enough to satisfy his judgment.[18]

(x) The decree will sometimes be rendered on terms as where the wife has taken a deed under a contract

In distributing the assets of a corporation which had given two mortgages to secure two successive issues of coupon bonds, the bonds secured by the first mortgage and their coupons, whether attached to or severed from the bonds and transferred and held bona fide, should be paid pari passu; the bonds secured by the second mortgage, with their coupons, whether attached or detached and transferred, the holders having taken them with knowledge of the prior mortgage, should be paid pari passu. Brown v. Maryland Freestone Mining, etc., Co., 55 Md. 547. Where an executor is plaintiff in one suit and is attorney for the plaintiff in another suit and judgment was for plaintiff in both suits but rendered in the first suit first in order of time, in distributing the proceeds upon a creditor's bill the parties share pari passu. Poole v. Daly, 1 Mackey 460. The court will protect the rights of all creditors. Doherty v. Holiday, 137 Ind. 282.

[16] If the commissioner is directed to settle the liens and their priorities on each parcel of the debtor's lands, and fails to do so, the report should be recommitted; and it is, generally, error to decree a sale before the liens are so ascertained and stated. And if in such a case, the creditors do not appeal from, or object to, a decree of sale, for any cause, the debtor has no right to complain, if it is necessary to sell all of the debtor's land to meet his liabilities. White v. Drew, 9 W. Va. 695.

[17] George v. St. Louis Cable & W. R. Co. (C. C. E. D. Mo.) 44 Fed. Rep. 117.

[18] Ryttenberg v. Keels, 39 S. C. 203. In Pennsylvania a creditor's bill may be maintained to subject the land of the debtor, which has been conveyed away in fraud of creditors, to the claims of the latter, by setting aside the conveyance, if the debtor is dead and the creditor has a lien upon the land. Houseman v. Grossman, 177 Pa. St. 455.

of purchase by the husband, found to be void as to creditors, and part of the purchase money remains unpaid, which she has assumed and agreed to pay. The court may direct the debts to be paid, and in default of so doing in a reasonable time direct the land to be sold.[19]

(y) Where it appears that the purchaser of property sold under a fraudulent judgment, or a judgment fraudulently confessed, has participated in the fraud and has sold the property to a *bona fide* purchaser a personal decree may be rendered against the former, but not so if he still retains the property.[20]

(z) A creditor cannot ask to have a deed set aside as fraudulent or in the alternative have it enforced as a general assignment.[21]

(aa) Under a bill filed to cancel a deed to a certain piece of land a decree should not be rendered for the satisfaction of the plaintiff's debt from the sale of another tract not mentioned in the pleadings.[22]

(bb) A decree after finding a deed to be void as to plaintiff and decreeing such fact should cancel and set the same aside and direct the sale of the land to pay plaintiff's debt.[23]

(cc) A decree will not be disturbed on appeal where it appears that there is a substantial conflict in the evidence. A finding of the trial court under such conditions will be permitted to stand.[24]

(dd) Equitable rights, debts and choses in action may be assigned or sold under the decree.[25]

(ee) Where a note is taken by a fraudulent grantor

[19] Martin v. Warner, 34 W. Va. 182.

[20] Vance Shoe Co. v. Haught, 41 W. Va. 275.

[21] Moog v. Talcott, 72 Ala. 210.

[22] Chrislip v. Teter, 43 W. Va. 356.

[23] Chrislip v. Teter, 43 W. Va. 356. In cases of fraudulent transfers or assignments a court of equity will consider the conveyance as void and the property as bound by the judgment and execution, and give relief to the diligent creditor. Disborough v. Outcalt, 1 N. J. Eq. 298.

[24] Miller v. Kehoe, 107 Cal. 340.

[25] Edmeston v. Lyde, 1 Paige Ch. 637.

for the property conveyed by him a decree of payment out of the proceeds of the note instead of the property conveyed may be rendered.[26]

(ff) Where a decree is rendered setting aside a conveyance as fraudulent it is not essential that the decree in terms shall provide for the payment of plaintiff's judgment.[27]

(gg) Where several cases against the same defendant are heard together upon the same evidence, by agreement, but no order of consolidation was entered, correct practice would be to render a separate decree in each case. If, however, the plaintiff is the owner of several judgments by assignment one decree for all may be rendered.[28]

(hh) The amount for which a decree should be rendered is the amount due on the respective judgments on which the bill is based, and not the amount for which a former decree may have been rendered.[29]

(ii) The decree should not be personal against an administrator as a general rule.[30]

(jj) Plaintiff in the bill having made out his case in effect becomes entitled to priority over the fraudulent grantee or alienee.[31]

(kk) Notwithstanding a creditor's proceeding is tried before a jury, a decree cannot be entered on the

[26] Lyman v. Place, 26 N. J. Eq. 30.

[27] Mitchell v. Sawyer, 115 Ill. 650.

[28] Beidler v. Crane, 135 Ill. 92. In this case but one decree was rendered but no objection having been interposed and no injury being shown to result the decree was sustained. Searing v. Berry, 58 Ia. 20. It is not necessary to provide for the payment of the severed judgments and directing that they be enforced by executions. Id.

[29] Dilworth v. Curts, 139 Ill. 508.

[30] Where plaintiffs in a creditor's bill have obtained judgments against the administrator, yet, having alleged in their bill an insufficiency of assets to satisfy their claims, they cannot have a decree over against the administrator for any balance which may remain due them, after final distribution, under the bill. Post v. Mackall, 3 Bland (Md.) 486.

[31] When a creditor comes into equity to remove a fraudulent

verdict as a mere conclusion of law. It is tried as a chancery case by the modes and proceedings known to courts of equity. If any questions of fact are referred to a jury the chancellor must still be satisfied in his own conscience that the finding is correct, and the decree must be made as the result of his own judgment, aided, it is true, by the verdict of the jury.[32]

(ll) A decree for damages cannot be rendered against one who has co-operated with the debtor in a fraudulent conveyance. Damages are recoverable only in a court of law. In such case the proper decree is for an accounting.[33]

(mm) If a fund belongs to a class the decree must provide for all of that class, and that they be brought in.[34]

(nn) A conveyance that is only constructively fraudulent may be upheld in favor of one not guilty of actual fraud to the extent of the actual consideration and be vacated only as to the excess and the decree may so order.[35]

(oo) On a bill filed by a part of the creditors in their own behalf alone the decree must not provide for the

conveyance out of the way of his execution the effect of the decree is simply to declare the creditor's claim an incumbrance in preference to the fraudulent incumbrance or alienation. Smith v. Vreeland, 16 N. J. Eq. 198.

[32] Where a case presented by a creditor's bill is tried as a common law case by a jury, and a decree is entered on the verdict as a mere conclusion of law upon the facts found, and not as the result of the chancellor's own judgment, though of his judgment aided by the finding, it is error. Dunphy v. Kleinsmith, 78 U. S. 610.

[33] Dunphy v. Kleinsmith, supra.

[34] But even in such case, the bill may be filed by one of them in his own behalf. The decree, however, may be for the benefit of all. Tatum v. Rosenthal, 95 Cal. 129; Marsh v. Burroughs, 1 Woods 463; Harmon v. Page, 62 Cal. 448.

[35] Phelps v. Curts, 80 Ill. 109; Wright v. Stanard, 2 Brock. 311; Coley v. Coley, 1 McCarter Ch. 350; Demarest v. Terhune, 3 C. E. Green 532; Boyd v. Dunlap, 1 Johns. Ch. 478; Clements v. Moore, 6 Wall. 299. Children to whom a debtor has transferred his property in fraud of creditors are entitled in an action to set aside the conveyance to prove a bona fide debt held by

payment of a larger sum than is due the creditors joining in the bill.[36]

(pp) The decree may properly provide for putting plaintiff in possession of property fraudulently conveyed on cancellation of the deed.[37]

(qq) If the bill is filed in behalf of plaintiff and others it is error to render a decree in behalf of the plaintiff alone.[38]

(rr) Under the statute in some states the plaintiff is entitled to solicitor's fees in a suit against an insolvent estate. This would be equitable and just in all cases where the suit is for the benefit of all creditors.[39]

§ 118. Appeals and Writs of Error.—It would be foreign to the scope of this work to enter into an extended examination of the subject of the right of appeal and writ of error, or other appropriate procedure of a similar nature, by which a creditor's action is brought before appellate tribunals for review. This branch of the practice is largely governed by statute and the procedure is so varied that but few principles of a general nature are to be found in the adjudicated cases.

(a) The right of appeal to the Supreme Court of the United States is limited to matters in controversy exceeding one thousand dollars, besides costs. The appellate jurisdiction of the United States Court of Appeals has no pecuniary limit.[40]

them against their father. Bomar v. Means, 31 S. E. 234.

[36] On a creditors' bill by a part only of the creditors filed for themselves alone and not in behalf of creditors generally to set aside a fraudulent conveyance and enforce a share-holder's liability to the corporation a decree must not provide for the payment of a larger sum than is due the creditors joining in the bill. Bouton v. Dement, 123 Ill. 142.

[37] McGaughey v. Brown, 46 Ark. 25.

[38] Johnson v. Waters, 111 U. S. 640.

[39] Bank of Blount County v. Smith (Ch. App.), [Aff'd by Sup. Ct.] (Tenn.) 48 S. W. 296.

[40] 26 Stat. at Large Ch. 517, Sec. 6, p. 828. See also Foster's Fed. Pr. Sec. 481. Northern Pacific R. Co. v. Amato, 144 U. S. 465.

An appeal in a creditor's suit from the United States Circuit Court to the Supreme Court prior to 1891 was not allowed unless the sum involved exceeded five thousand dollars. And where the several judgments do not individually exceed this amount the right of appeal does not exist.[41]

(b) In this class of actions it is not necessary to entitle a party to the right of appeal that he be actually a party to the record, provided he has an interest in the question that may be affected by the decree.[42]

Thus, where on a creditor's bill a cause is referred to a master or referee to take proof of claims against the estate of the defendant and a claim of a creditor is sought to be proved under such reference and is disallowed, such creditor, though not a party to the suit, is entitled to a right of appeal on the coming in of the master's or referee's report and the confirmation of his action by the court.[43]

[41] On appeal by defendants from a decree of a circuit court on a creditors' bill in which the judgments are several for the payment of amounts adjudged to creditors severally the supreme court has jurisdiction only over such as appeal from a decree having judgment for a sum exceeding $5,000. Stewart v. Dunham, 115 U. S. 61. The supreme court of the United States has no jurisdiction on appeal in a creditor's suit where the judgment of the creditor appealing does not exceed the statutory amount entitling a party to appeal. Seaver v. Bigelows, 72 U. S. 208. Where several claims of plaintiffs in a creditors' bill are not individually over the pecuniary limit an appeal does not lie to the supreme court of the U. S. Chatfield v. Boyle, 105 U. S. 231; Terry v. Hatch, 93 U. S. 44. Where one of the creditors in a proceeding to set aside a mortgage in the United States court based his suit on a claim less than $5,000 (as then fixed by act of Congress) such creditor was not entitled to appeal to the supreme court. Smith Middlings Purifier Co. v. McGroarty, 136 U. S. 237; Stewart v. Dunham, 115 U. S. 61; Gibson v. Shufeldt, 122 U. S. 27.

[42] Derrick v. Lamar Ins. Co., 74 Ill. 404; Strike v. McDonald, 2 Harr. & Gill. 191; Barbour's Ch. Pr. Vol. I., p. 382.

[43] When on a creditor's bill the cause is referred to a master to take proofs of all claims against the estate of the defendant and a claim is sought to be proved before such master by a person not a party to the bill, which is disallowed an appeal will lie by such claimant. Der-

The right of appeal in favor of a creditor exists though the case may be undisposed of as to other creditors. As to such creditor the order is final. The general rule is that an appeal or writ of error does not lie where the order is interlocutory. This rule, however, is frequently modified by statute, and the statute should be carefully followed.[44]

§ 119. Discharge in Bankruptcy as a Defense.—(a) It is a defense to a creditor's bill to show that since the filing of the answer the defendant has been discharged as a bankrupt, but it is competent for the plaintiff to contest the validity of the discharge by showing that it was obtained by fraud.[45]

A discharge in bankruptcy may be set up in a supplemental answer.[46]

(b) Where a suit is commenced before a decree in bankruptcy against the defendant so as to obtain a lien on his property the subsequent discharge in bankruptcy

rick v. Lamar Ins. Co., 74 Ill. 404. An appeal lies from an order of court disallowing a claim. Burnham v. Lamar Ins. Co., 79 Ill. 160.

[44] Where a suit in chancery was commenced against the bank and other defendants to secure a general fund in the hands of receivers for the mutual benefit of the creditors of a limited partnership by having certain preferences set aside a judgment in favor of the bank is appealable, though the case is undisposed of as to other defendants. Crouch v. First Nat. Bk., 156 Ill. 342. A creditors' bill does not involve a freehold so as to give an appeal directly to the supreme court. (See statute.) Sawyer v. Moyer, 105 Ill. 192.

[45] If a defendant debtor is discharged under the act of bankruptcy after answer filed, it is a matter of course to permit him to put in answer setting up the discharge, unless the plaintiff will stipulate to exempt the person and after-acquired property of the bankrupt, or to dismiss his bill without costs, or will swear to fraud in the discharge. Scott v. Grant, 10 Paige (N. Y.) 485. But where the plaintiff swears that the discharge was obtained by fraud, the proper course is to authorize the defendant to set up the discharge by a cross bill. Scott v. Grant, supra. A creditor's bill will not be sustained to subject property in the possession of a bankrupt, and which was acquired by him before bankruptcy, to the payment of the debts of the bankrupt. McCabe v. Cooney, 2 Sandf. (N. Y.) Ch. 314.

[46] Stewart v. Isidor, 5 Abb. [N. Y.) Pr. N. S. 68.

is not a bar to the suit generally, but only a bar to a personal decree against the bankrupt.[47]

(c) Where a defendant subsequent to the filing of a bill against him obtains a discharge in bankruptcy and the plaintiff desires to contest the validity of such discharge the proper practice is to file a supplemental bill, averring the commencement of the original suit, the subsequent decree in bankruptcy, the discharge and the facts upon which it is claimed the discharge is void and inoperative, making the assignee and bankrupt parties to the bill. If he wishes to proceed against the property which has passed to the assignee subject to his prior claim thereon he must revive the suit against the assignee alone, and if the assignee has sold the property the purchaser in that case should be made a defendant.[48]

§ 120. Limitations as a Defense.—(a) The statute of limitations has been held not to be a good defense in a suit in equity brought to set aside a fraudulent conveyance by a judgment creditor based on a judgment in full force and unsatisfied.[49]

(b) Where there is both a legal and an equitable remedy for a cause of action the statute of limitations applies to both remedies alike, except under certain special circumstances.[50]

[47] Lowry v. Morrison, 11 Paige Ch. 327. Where a defendant in a creditor's bill who was a proper party at the commencement of the suit, has been subsequently discharged, the plaintiff will be permitted to dismiss the bill, as to him, without costs. Pratt v. Babcock, 10 Paige (N. Y.) 295.

[48] Penniman v. Norton, 1 Barb. Ch. 246.

[49] Abbey v. Commercial Bk. of New Orleans, 31 Miss. 434. Where a judgment was obtained Sept. 19, 1881, execution issued Nov. 3, 1881, and a creditor's bill was filed Feb. 7, '83, and the summons issued was served on defendants Feb. 9, '83, and judgment lien expired in September, '88, and the decree for complainant was not rendered until Dec. 16, '89, it was held that the bill was filed in due and ample time. Davidson v. Burke, 143 Ill. 139. Courts of equity are bound by the statute of limitations. McGaughey v. Brown, 46 Ark. 25.

[50] Administrators, etc., v. Wood, 42 N. J. Eq. 563; Somerset Bk. v. Veghte, 15 Stew. 39; Kane v. Bloodgood, 7 Johns. Ch. 90;

(c) The defense of the statute of limitations is optional with the defendant, and personal to him, and if not interposed as a defense plaintiff may recover.[51]

§ **121. Laches as a Defense.**—(a) Laches in bringing suit should be set up in the answer. But laches cannot be imputed to a party from delay in regard to a fraud until the fraud is discovered or knowledge of it acquired; nor can it be raised for the first time in the appellate court.[52]

(b) While it has been held that laches as a defense should be raised by the answer, yet where the laches, as is usually the case, appears on the face of the bill, it may be taken advantage of by demurrer, or even without, on the hearing.[53]

Smith v. Clay, 2 Amb. 646. After dissolution one partner cannot revive a debt barred by limitations. Sears v. Starbird, 78 Cal. 225.

[51] McMannomy v. Chicago, D. & V. R. Co. 167 Ill. 497, 47 N. E. 712, Rev'g 63 Ill. App. 259.

[52] Laches should be set up by answer. Darst v. Murphy, 119 Ill. 343. But cannot be raised for the first time in the appellate court. Walker v. Denison, 86 Ill. 142; Trustees of School v. Wright, 12 Ill. 432; Dawson v. Vickery, 150 Ill. 398. Laches will not be imputed to a party from delay in regard to a fraud until knowledge of the fraud has been acquired. Jones v. Lloyd, 117 Ill. 597; Clapp v. Peterson, 104 Ill. 26; Breit v. Yeaton, 101 Ill. 242. Where the legal title has become vested in a bona fide purchaser for value while the judgment creditor was sleeping on his rights a court of equity will not interfere. Trusdell v. Lehman, 47 N. J. Eq. 218. A creditor, eighteen months after obtaining judgment, filed a bill against his debtors, and their assignees, and two years afterwards filed an amendment attacking the assignment. The bill came up for a hearing after the property had been distributed. Held, that the creditor had been guilty of delay in filing both his bill and amendment and as the answer denied all fraudulent intent, the bill was dismissed, but without costs. Redmond v. Wemple, 4 Edw. (N. Y.) 221.

[53] In Jones v. Perkins, 76 Fed. Rep. 84, the court say: "The lapse of time where the delay has been great, and there are no excusatory circumstances to palliate it, carries with it a reasonable inference, if not a presumption, that the parties and the court have not the light and cannot obtain the knowledge of the circumstances surrounding the transaction sought to be investigated that a prompt and reasonable assertion of the claim might have afforded. The courts therefore scrutinize with jealousy stale claims and demands, especially where death has removed those whose conduct is to be investigated, and who necessarily were best cognizant of the transactions involved. Accordingly, the equitable rule is

(c) Laches is not, like limitations, a mere matter of time, but is based on the inequity of permitting claims to be enforced growing out of the changed condition of the property or parties. This principle is not based upon presumption of payment, nor upon an analogy to the law of limitations, but is based upon public policy and the difficulty of doing entire justice between the parties in consequence of the delay.[54]

that a tardy suitor must set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so ignorant of his rights, and the means used by respondents to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case on his own showing, without inquiring whether there is a demurrer or formal plea of the statutes of limitation contained in the answer." Badger v. Badger, 2 Wall. 87, 94. The same requirements are made in Wood v. Carpenter, 101 U. S., 135; Bank v. Carpenter, 101 U. S. 567; Harwood v. Railroad Co., 17 Wall. 78; Marsh v. Whittmore, 21 Wall. 178; Godden v. Kimmell, 99 U. S. 201. While some of these cases deal specially with the question of fraud, the principle which they apply requires the same rule of judgment where the complainant makes no charge of fraud, but has been merely negligent in prosecuting a claim for relief. Brown v. County of Buena Vista, 95 U. S. 157; Twin Lick Oil Co. v. Marbury, 91 U. S. 587; Hayward v. Bank, 96 U. S. 611; Holgate v. Eaton, 116 U. S. 33; 6 Sup. Ct. 224; Davison v. Davis, 125 U. S. 90; 8 Sup. Ct. 825; Societe Fonciere et Agricole des Etats Unis v. Milliken, 135 U. S. 304; 10 Sup. Ct. 823; Galiher v. Cadwell, 145 U. S. 368; 12 Sup. Ct. 873. In the latter case Mr. Justice Brown, who delivered the opinion of the court, says that the cases which deny relief where long delay has supervened in the assertion of rights "all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claims to be enforced, and inequity founded upon some change in the condition or relation of the property of the parties." In the cases which he quotes as illustrative of the doctrine of the courts of equity upon the effect of delay, complainants who had postponed action for periods ranging from two to seven years were held chargeable with laches and denied relief. Laches deprive a party of the right to apply to a court of equity for relief, although the defendant does not in his answer allege that the claim is stale. Harris v. Hillengass, 66 Cal. 79. A court of equity will refuse to entertain a suit brought after an unreasonable delay regardless of a plea of the statute of limitations. Chapman v. Bank of Cal., 97 Cal. 155.

[54] Societe, etc., v. Milliken, 135 U. S. 304. A refusal of the court to grant relief where the plaintiff is guilty of laches is not based upon a presumption of payment nor upon analogy to

(d) If the time elapsed prior to the bringing of the suit is unreasonable the plaintiff in the bill must state specifically what were the impediments to an earlier prosecution of the suit, such as how his ignorance of his rights occurred, or the means used by defendants to keep him in ignorance, or how and when he came to a knowledge of the matters alleged in the bill.[55]

The matter of laches is addressed to the sound judicial discretion of the court under the facts and circumstances disclosed in each particular case.[56]

the statute of limitations but upon considerations of public policy and the difficulty of doing entire justice between the parties in consequence of unreasonable delay. Chapman v. Bk. of Cal., 97 Cal. 155. The principle factors in determining the questions of laches are acquiescence and lapse of time, change in value or character of the property, etc. Chapman v. Bk. of Cal., 97 Cal. 155. Where the legal title has become vested in a bona fide purchaser for value while a judgment creditor was sleeping on his rights, a court of equity will not interfere. Truesdell v. Lehman, 47 N. J. Eq. 218. A creditor seeking to annul a deed of trust for creditors executed by the officers of a corporation, upon the ground that they were without authority to execute the same, must begin action within a reasonable time after the execution of the deed. Miller v. Matthews, 87 Md. 464. A plea that the property has been sold under execution since plaintiff's suit was brought is not available in favor of defendant, but only in favor of the purchaser or his privies. Arbuckle Bros. Coffee Co. v. Werner, 77 Tex. 43. It is no objection that a foreclosure, even if invalid, constitutes no obstruction to the sale of the premises under execution, since the equity of redemption could be sold more advantageously if the mortgage was not foreclosed. Swain v. Lynd, (Minn.) 76 N. W. 958.

[55] Jones v. Perkins, 76 Fed. Rep. 82. Where a creditor of an estate is induced to delay action on the promise that he would be paid as soon as land belonging to the estate could be sold advantageously, and he does not present his claim within the time limited by law by reason of the promise made he may maintain a bill in equity to recover the balance of his claim. Knight v. Cunningham, 160 Mass. 580. Where a creditor waited seven years after a fraudulent conveyance was made and on learning thereof instituted suit there is no ground for equitable estoppel against him. Annin v. Annin, 24 N. J. Eq. 184. When a complainant in a creditor's bill has by his delay, induced or suffered a defendant to incur expense or enter into engagements of a burdensome character, a court of equity will consider that the complainant is guilty of such laches as precludes him from obtaining relief. Coyne v. Sayre, 54 N. J. Eq. 702; De Grauw v. Mechan, 48 N. J. Eq. 219; Aldridge v. Muirhead, 101 U. S. 397.

[56] Chapman v. Bk. of Cal., 97 Cal. 155.

CHAPTER V.

JUDGMENT, EXECUTION AND RETURN.

§ 150. Judgment required—General rule.
151. Reason for this primary rule.
152. Rule in United States courts.
153. Practice not uniform in fraudulent conveyances.
154. Levy of execution or return not required, when.
155. Return of execution—When required.
    (a) To reach equitable assets.
    (b) Where judgment has been assigned.
    (c) To remove fraudulent conveyances, incumbrances, etc.
    (d) To recover from stockholders unpaid stock.
    (e) To reach partnership property, when.
    (f) To set aside an assignment, but not to uphold assignment.
    (g) To reach money due the debtor.
    (h) To personal property fraudulently sold.
    (i) To remove a fraudulent judgment.
    (j) To relieve against fraud generally.
    (k) To administer the assets of an insolvent firm.
    (l) In case of a surety who has paid debt of principal.
156. Grounds of equitable relief.
    (a) Lien in favor of plaintiff.
    (b) Exhaustion of legal remedies.
157. Nature of lien required.
158. Reasons for rule requiring judgment, etc.
159. General creditor cannot recover by joining with judgment creditor.
160. Attachment as a basis of suit.
161. Exhaustion of legal remedy must be complete.
162. There must be an existing lien.
163. General creditor has no standing.
164. A money decree sufficient.
165. Rule applies to suits to enjoin debtor from selling.
166. Jurisdiction not conferred by supplemental bill.
167. Exceptions to rule requiring judgment, etc.
    (a) Where the debtor is dead.
    (b) Where an assignment by a non-resident debtor.
    (c) Where the debtor is insolvent.

(d) Where the debtor is an insolvent corporation and defunct.
(e) Where the statute creates a lien on lands of a decedent.
(f) Where the fund to be reached is a trust fund.
(g) Where attachment is treated as sufficient.
(h) Where a trust has been created.
(i) Where the debtor has absconded.
(j) Where an administrator refuses to sue.
(k) Where the fund is accessible to a court of equity.
(l) That debtor may dispose of property not an exception.
(m) Where service on corporation and stockholders impossible.
(n) Where corporation is in process of winding up—Receiver.
(o) Where proceedings against an equitable estate.
(p) Where statute gives right to a general creditor.

168. Execution must issue to proper county.
169. Issuing of execution may be waived by defendant.
170. Exhaustion of legal remedy—How established.
171. A debtor of defendant paying protected.
172. Return of execution—When made.
(a) Return within statutory period prima facie.
(b) Return within statutory period after demand, etc.
(c) Return by order of plaintiff's attorney.
(d) Return is jurisdictional—To what court returned.
(e) Return before bill filed.
(f) Return if irregular may be amended.
(g) Return imports verity, but must not be collusion.
(h) Return no uniform rule as to requisites.
(i) Return defective may be cured on hearing.
(j) Return admitted is prima facie.
173. Judgment need not be such that immediate levy could be made.
174. Judgment upon a judgment—Effect of.
175. Valid judgment by confession sufficient.
176. Judgment when conclusive, regularity of execution.
177. Judgment not conclusive as to other creditors.
178. Judgment in federal court basis for bill in state court and vice versa.
179. Judgment need not antedate act complained of.
180. Claim against estates must be exhibited to be basis.
181. Bill by wife against husband—Must be creditor.
182. Judgment necessary though fraud alleged.
183. Allegation as to date of judgment—Amendment.

184. Judgment based on tort sufficient.
185. Order of proceeding as between joint tenants and surety.
186. Agreement to pay debts secured by threats not enforcible.
187. One judgment creditor may attack another.

Section **150. Judgment Required.**—The general rule is that a Creditors' Bill, or a bill in the nature of a Creditors' Bill, will not lie until a judgment, or a money decree, in favor of the plaintiff against the debtor has been obtained, and is thus made the foundation of the equitable proceeding. This rule is based upon the general principle lying at the foundation of all equitable proceedings that in the absence of statutory jurisdiction, or purely equitable proceedings, common law remedies must have been first exhausted before equitable proceedings will be entertained.

A valid judgment against the debtor, the issuance of an execution thereon to the proper officer, in the proper county, and a return of such execution unsatisfied, in whole or in part, are essential prerequisites to the filing of a Creditors' Bill.

This is the proper and legal method of establishing the jurisdiction of a court of equity in that it shows an exhausting of legal remedies. The exhaustion of legal remedies is required except where the plaintiff has a specific lien, by attachment or execution, upon the money or property from which it was derived.

The great weight of authority both in Great Britain and in this country is that a court of equity will not interfere until plaintiff has obtained judgment if he desires to have a fraudulent obstruction removed, or if it is to subject an equitable estate, not liable to sale on execution he must exhaust his legal remedies by obtaining a judgment and a return of *nulla bona* before a court of equity will afford such relief.[1]

[1] Clark v. Raymond, 84 Ia. 257; Gordon v. Worthley, 48 Ia. 429; Gwyer v. Figgins, 37 Ia. 517; Pearson v. Moxfield, 51 Ia. 76;

Miller v. Dayton, 47 Ia. 312; Bigelow, B. S. Co. v. Magee, 27 N. J. Eq. 392; Haston v. Castner, 31 N. J. Eq. 697; Swayze v. Swayze, 9 N. J. Eq. 273; Oakley v. Pound, 14 N. J. Eq. 178; Edgar v. Clevenger, 1 Green's Ch. 258; Hunt v. Field, 1 Stock. 36; Williams v. Michenor, 11 N. J. Eq. 520; Stirlen v. Jewett, 165 Ill. 410; Frothingham v. Hodenpyl, 48 N. Y. S. R. 449. Where a creditor seeks the aid of a court of equity as to real estate he must show a judgment at law creating a lien thereon and if he seeks aid in regard to personal property he must also show execution. Edgar v. Clevenger, 2 N. J. Eq. 258; Swayze v. Swayze, 9 N. J. Eq. 273; Young v. Frier, 9 N. J. Eq. 465; Wiggins v. Armstrong, 2 Johns. Ch. R. 144; Post v. Rouch, 26 Fla. 442; Cribbedge v. Adams, 42 Ga. 124; Peyton v. Lamar, 42 Ga. 131; Reubens v. Joel, 13 N. Y. 488; Dunlevy v. Tallmadge, 32 N. Y. 457; Cassidy v. Meacham, 3 Paige 311; McElwain v. Willis, 3 Paige 505; Child v. Brace, 4 Paige 309; Merchants' etc. Bk. v. Griffith, 10 Paige 519; Hastings v. Belknap, 1 Denio 190; Neustadt v. Joel, 2 Duer 530; Gilbert v. Stockman, 81 Wis. 602; Adee v. Bigler, 81 N. Y. 349; Adsit v. Butler, 87 N. Y. 585; McCullough v. Colby, 5 Boseo 477; Geery v. Geery, 63 N. Y. 252; Fox v. Moyer, 54 N. Y. 125; Dunlevy v. Tallmadge, 32 N. Y. 457; Shaw v. Dwight, 27 N. Y. 244; North American F. Ins. Co. v. Graham, 5 Sandf. 197; Lichtenberg v. Herdtfelder, 33 Hun, 57; Hadden v. Spader, 20 Johns. 554; Webster v. Clark, 25 Me. 313; Dana v. Haskell, 41 Me. 25; Rice v. Barnard, 20 Vt. 479; Jones v. Green, 68 U. S. 330; Bigelow v. Andress, 31 Ill. 322; Ballentine v. Beall, 3 Scam. 203; Chicago D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151; Wisc. Granite Co. v. Gerrity, 144 Ill. 77; Herrlich v. Kauffman, 99 Cal. 271; Cf. Taylor v. Robinson, 7 Allen 253; Wiggin v. Heywood, 118 Mass. 514; Carver v. Peck, 131 Mass 291; Taylor v. Robinson, 7 Allen 253; Smith v. Hurst, 10 Hare 30; McDermott v. Strong, 4 Johns. Ch. 687; Reubens v. Joel, 13 N. Y. 488; Krouskop v. Krouskop, 95 Wis. 296; Hopkins v. Joyce, 78 Wis. 443; Meissner v. Meissner, 68 Wis. 336; Adee v. Bigler, 81 N. Y. 349; Carter v. Hightower, 79 Tex. 135; Mellen v. Moline, etc. Wks., 131 U. S. 352; Jones v. Green, 68 U. S. 330; Smith v. F. Scott H. etc. R. Co., 99 U. S. 398; Van Weel v. Winston, 115 U. S. 228; Smith v. Railroad Co., 99 U. S. 399, 401; Skeele v. Stanwood, 33 Me. 307; Zella Guano Co. v. Heatherly, 38 W. Va. 409; Partee v. Matthews, 53 Miss. 140; Fleming v. Grafton, 54 Miss. 79; Hess v. Horton, 2 App. Cases (D. C.) 81; Union Trust Co. v. Boker, 89 Fed. Rep. 6; Jenks v. Horton, 4 Det. L. N. 481; Meux v. Anthony, 11 Ark. 411; Williams v. Bizzell, 11 Ark. 716; Southard v. Benner, 72 N. Y. 424; Geery v. Geery, 63 N. Y. 252; Frisbey v. Thayer, 25 W. R. 396; Fox v. Moyer, 54 N. Y. 125. In Pennsylvania a contract creditor is within the protection of the statute against fraudulent transfers, as well as a judgment creditor; but he cannot assert his rights thereunder until he has recovered a judgment or a lien, or a right to a lien, upon the specific property. Re Hogan's Estate, 181 Pa. 500. In this case the charge of fraud was against a judgment creditor. In Kentucky simple-contract creditor could not, prior to act March 16, 1896, set aside a conveyance by the debtor as fraudulent in an action on the contract, without procuring an attachment. Johnson v. Bonfield, 19 Ky. L. Rep. 300, 40 S. W. 697. The purpose of showing a judgment and execution returned no property found, is to show that plaintiff has exhausted his legal remedies. Durand v. Gray, 129 Ill. 9; Preston v. Colby, 117 Ill.

Or the action may be in aid of an execution outstanding, which for some reason cannot be enforced.[2]

§ **151. Reason for Rule.**—The necessity of these prerequisites is not in the fact that the creditor will reap a benefit, pecuniary or otherwise, from the judgment, execution and return. In fact it is frequently known in the very outset that they will be unavailing. The purpose, therefore, is rather to lay a foundation for

477; Dormueil v. Ward, 108 Ill. 216; Balentine v. Beall, 3 Scan. 203; Miller v. Davidson, 3 Gilm. 518; McDowell v. Cochrane, 11 Ill. 31; Ishmael v. Parker, 13 Ill. 324; Newman v. Willets, 52 Ill. 98; McConnel v. Dickson, 43 Ill. 99; Beach v. Bestor, 45 Ill. 341; Ladd v. Judson, 71 Ill. App. 283, 174 Ill. 344. In this case it was held that a foreign judgment could not be made the basis of a creditor's bill. The issue and return of execution unsatisfied are not conditions precedent to the maintenance of a bill by a creditor to set aside fraudulent conveyances executed by the debtor without consideration, although to maintain a creditor's bill to reach equitable assets the legal remedy must be first exhausted. Wisconsin Granite Co. v. Gerrity, 144 Ill. 77. The return of an execution that it is wholly unsatisfied is evidence of the exhaustion of legal remedies and a basis for a creditor's suit. Doskam v. Neff, 79 Wis. 161. To entitle a creditor to reach money in the hands of the court apparently belonging to another creditor of a common debtor he must show that he has exhausted his remedy at law against the debtor, or has a specific lien upon the money by attachment or execution or upon the property from which money was derived. Meissner v. Meissner, 68 Wis. 336. Cf. Montague v. Horton, 12 Wis. 599; Hyde v. Chapman, 33 Wis. 391; Williams v. Sexton, 19 Wis. 42; Gates v. Boomer, 17 Wis. 455; Cornell v. Radway, 22 Wis. 260.

[2] Gilbert v. Stockton, 81 Wis. 602. The existence of the lien of the execution without an adequate remedy for enforcing it at law by reason of a fraudulent or inequitable obstruction interposed by the defendant, is sufficient to give a court of equity jurisdiction. Galloway v. Hamilton, 68 Wis. 651; Cornell v. Radway, 22 Wis. 260; Angell v. Draper, 1 Vern. 399; Shirley v. Watts, 3 Atk. 200. Where a judgment became a specific lien on property of the debtor by a levy thereon he may maintain an equitable proceeding to remove a fraudulent conveyance without a return of the execution. In such case relief rests upon the fact that an execution has issued, and a specific lien has been acquired upon the property of the debtor by its levy, but that the obstruction interposed prevents a sale of the property at a fair valuation. It is to remove the obstruction and thus enable the creditor to obtain a full price for the property that the suit is brought. Galloway v. Hamilton, 68 Wis. 651; Cf. Jones v. Green, 68 U. S. 330; Gates v. Boomer, 17 Wis. 455; Cornell v. Radway, 22 Wis. 260; Beck v. Burdett, 1 Paige, 305; North Am. F. Ins. Co. v. Graham, 5 Sandf. 197; McElwain v. Willis, 9 Wend. 548; Brainard v. Van Kuran, 22 Ia. 261; Fleming v. Grafton, 54 Miss. 79; Montgomery v. McGee, 7 Humph. 234;

the jurisdictional intervention of a court of equity. This being true it follows that the facts which constitute the exhaustion of legal remedies are jurisdictional facts and must be alleged in the bill or petition, and if not admitted must be proven on the hearing.[3]

§ 152. Rule in United States Courts.—The rule prevails in the Circuit Court of the United States sitting as a court of equity where the purpose of the proceeding is to reach property that has been fraudulently conveyed by the debtor, though in that court, as will be seen elsewhere, there is greater latitude and liberality in allowing exceptions to the rule, where no useful end is subserved by its strict enforcement, the jurisdiction being shown by other averments. It should also be observed that the practice of this court is not modified by the statutory enactments of the State in which the court is sitting with reference to the jurisdictional standing of the plaintiff.[4]

McNairy v. Eastland, 10 Yerg. 310.

[3] Weaver v. Haviland, 142 N. Y. 534. The general rule is that as preliminary to the filing of a creditor's bill a judgment and an execution thereon returned unsatisfied are required, as jurisdictional facts. The National Tradesmen's Bk. v. Wetmore, 124 N. Y. 241. These prerequisites are not dispensed with though no benefit results to the creditor therefrom. Id. Estes v. Wilcox, 67 N. Y. 264; Adsit v. Butler, 87 N. Y. 585. One not having a judgment and execution is not a creditor within the meaning of the New York statute. Sec. 1 Ch. 279 Laws 1833. Jones v. Graham, 77 N. Y. 628. A creditor's bill must contain an averment that an execution has been issued on the judgment and returned fruitless. Suydam v. N. W. Ins. Co., 51 Pa. St. 394; Hendricks v. Robinson, 2 Johns. Ch. 283; Brinkerhoff v. Brown, 4 Johns. Ch. R. 671; Williams v. Brown, 4 Johns. Ch. 682; Clarkson v. De Peyster, 3 Paige, 320; Beck v. Burdett, 1 Paige, 305; Harrison v. Battle, 1 Dev. Eq. 537. A general creditor having no judgment has no standing in the circuit court of the United States sitting as a court of equity under a bill to set aside and vacate a fraudulent conveyance. Cates v. Allen, 149 U. S. 451; National Tube Works v. Ballou, 146 U. S. 517; Smith v. Railroad Co., 99 U. S. 398; Case v. Beauregard, 99 U. S. 119; Cf. Angell v. Draper, 1 Vern. 399; Shirley v. Watts, 3 Atk. 200; Wiggins v. Armstrong, 2 Johns. 144; McElwain v. Willis, 9 Wend. 548; Crippen v. Hudson, 3 Kernan 161; Jones v. Green, 68 U. S. 330.

[4] Jurisdiction of a federal court to reach property fraudulently conveyed must be based on a judgment notwithstanding a

The rule in the Federal courts is the same as in most of the State courts where suit is brought in equity to subject the property of the defendant to the payment of a debt which requires as a precedent action the exhaustion of legal remedies. In all cases where a court of equity interferes to aid the enforcement of a remedy at law, there must be an acknowledged debt, or one established by a judgment rendered, accompanied by a right to the appropriation of the property of the debtor for its payment, or, to speak with greater accuracy, there must be, in addition to such acknowledged or established debt, an interest in the property, or a lien thereon, created by contract or by some distinct legal proceeding.[5]

The general proposition that new equitable rights created by the States may be enforced in the Federal courts is correct, but it is subject to the qualification that such enforcement does not impair any right conferred, or conflict with any prohibition imposed by the Constitution or laws of the United States. Thus where the statute of a State gives courts of equity jurisdiction of bills exhibited by creditors who have not obtained judgments at law, or having judgments have not had executions returned unsatisfied, to set aside fraudulent conveyances of property or other devices resorted to for the purpose of hindering, delaying or defrauding creditors, such bills cannot be exhibited in the United States courts for the reason that the Constitution in its Sev-

state statute authorizing such suit without judgment. Hollins v. Brierfield C. Co., 150 U. S. 371; Cates v. Allen, 149 U. S. 451. The rule requiring judgment is applicable to a suit against a corporation to reach unpaid stock. Hollins v. Brierfield C. Co., 150 U. S. 371. The offer of a debtor to allow a judgment does not render it collusive as to another creditor. Columbus Watch Co. v. Hodenpyl, 135 N. Y. 430.

[5] Scott v. Neeley, 140 U. S. 106; Smith v. Railroad Co., 99 U. S. 398, 401; Angell v. Draper, 1 Vern. 398, 399; Shirley v. Watts, 3 Atk. 200; Wiggins v. Armstrong, 2 Johns. Ch. 144; McElwain v. Willis, 9 Wend. 548; Crippen v. Hudson, 3 Kern. 161; Jones v. Green, 68 U. S. 330.

enth Amendment declares that in suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved. This right cannot be impaired by blending with the claim cognizable at law a demand for equitable relief in aid of the legal action.[6]

The rule is applicable to almost all classes of Creditors' Bills, and bills in the nature of Creditors' Bills where jurisdiction is exercised in behalf of creditors against their debtors and those in privity with them, thus in proceedings to remove fraudulent conveyances, incumbrances, mortgages, judgments, assignments and transfers of personal property, to reach the equitable assets of the debtor not subject to levy and sale, proceedings against insolvent corporations and their stockholders, trusts, etc.[7] The basis for the application of

[6] Scott v. Neeley, 140 U. S. 106. The blending of common law and equitable remedies is not permissible in the courts of the United States. Bennett v. Butterworth, 11 How. 669; Thompson v. Railroad Co., 6 Wall. 134; Robinson v. Campbell, 3 Wheat. 212; Fenn v. Holme, 21 How. 481.

[7] On a bill filed to set aside a fraudulent conveyance it must appear that plaintiff has exhausted his legal remedy; but this is shown by the return of an execution nulla bona. If the officer makes a demand for property or money to satisfy the execution and the debtor states that he has neither, the officer may thereupon return the execution no property found. Lewis v. Lanphere, 79 Ill. 187; Chicago, D. & V. R. Co. v. Town of St. Anna, 101 Ill. 151; Russell v. Chicago T. & S. Bk., 139 Ill. 538. If the claim is a legal demand judgment and execution returned are required. Austin v. Bruner, 65 Ill. App. 301; Boulton v. Dement, 123 Ill. 142; Hanford Oil Co. v. First N. Bk., 126 Ill. 584. The fact of insolvency of the debtor is not sufficient in Illinois to waive the necessity of a judgment and execution returned nulla bona. Greenway v. Thomas, 14 Ill. 271; Patterson v. Lynde, 112 Ill. 196; Bigelow v. Andress, 31 Ill. 322; Gore v. Kramer, 117 Ill. 176. Insolvency, however, if coupled with some reason why judgment cannot be obtained is sufficient. Greenway v. Thomas, 14 Ill. 271; Steere v. Hoagland, 39 Ill. 264. In order to sustain a bill in equity to set aside a fraudulent conveyance the creditor must show that he has already established his debt by a judgment of some court of competent jurisdiction. This is established doctrine in Illinois by an unbroken line of cases. Austin v. Bruner, 169 Ill. 178. It is not an exception to this rule that the grantee would in the meantime put the property out of his possession and into the hands of an inno-

this rule in most of the States is uniformity, and its merit is in that it relieves the case from any uncertainty as to what might have resulted had no execution been issued, and places the jurisdiction of the equity court squarely upon an exhaustion of all legal remedies, which is the general doctrine at the foundation of equitable jurisdiction.[8]

§ 153. Practice not Uniform in Matters of Fraudulent Conveyances.—The practice is not uniform in all jurisdictions. Where a creditor seeks the aid of a court of equity to subject property fraudulently conveyed to the payment of his debts, a judgment must first be obtained before any land so conveyed can be reached, and where the purpose is to reach personal property, an execution must have been issued first. The creditor may, however, after judgment, file his bill and have the title settled before undertaking to sell, under the judgment, but he is not bound to do so. He may sell under his execution, become the purchaser and have deed issued based on the judgment and file his bill to quiet his title. In this proceeding the issuance of an execution and return thereof, *nulla bona,* are not required.[9]

§ 154. Return of Execution—Return When not Required.—The levy of an execution is not a pre-

cent purchaser, and thereby defeat the collection of the debt. Austin v. Bruner, 169 Ill. 178; Dormueil v. Ward, 108 Ill. 216; Shufeldt v. Boehm, 96 Ill. 560. Nor is it an exception to the rule that a judgment is required that the debtor has made an assignment and is insolvent. Austin v. Bruner, 169 Ill. 178; Dormueil v. Ward, 108 Ill. 216; Shufeldt v. Boehm, 96 Ill. 560. Where it is sought to satisfy a debt out of some equitable estate of the debtor, which is not liable to levy and sale under an execution at law. A judgment and execution returned nulla bona are necessary before resorting to a court of equity. It is a jurisdictional prerequisite. Miller v. Davidson, 5 Gilm. 518; Greenway v. Thomas, 14 Ill. 271; Weightman v. Hatch, 17 Ill. 281.

[8] McDermott v. Strong, 4 Johns. Ch. 687; Hadden v. Spader, 20 Johns. 554.

[9] Harrison v. Kramer, 3 Iowa 543, 561; Stock Growers' Bank v. Newton, 13 Colo. 245.

requisite to the filing of a Creditors' Bill where the judgment debtor never had a legal title to the premises or where his interest as a vendee under the contract has terminated before judgment by virtue of the contract on both sides.[10] And where a judgment is obtained, execution issued, a levy made on property held by the wife in secret trust for her husband, a bill may be filed by a judgment creditor to subject the property to the payment of the debt without execution returned *nulla bona*. The proceeding in such case is not based on the theory of reaching equitable assets on which the judgment is not a lien, nor upon the theory of an exhaustion of legal remedies, but to remove out of the way of the execution a pretended conveyance alleged to be void.[11] The requirement of a judgment, execution and return *nulla bona* is necessary in all cases where the creditor's proceeding is based on the general equity powers of the court, unmodified by the statute.[12]

§ 155. Return of Execution—When Required.—The general rule which has been established from the earliest times is that the return of an execution unsatisfied based on a judgment against the debtor, by the

[10] Fairbairn v. Middlemiss, 47 Mich. 372. It has been sometimes held that the judgment alone is sufficient where the bill is to reach property fraudulently conveyed, but the weight of authority is that a judgment and execution issued and not returned is sufficient. Fox v. Moyer, 54 N. Y. 125; Hendricks v. Robinson, 2 Johns. Ch. 283; McCullough v. Colby, 5 Bosw. 477; The N. A. Fire Ins. Co. v. Graham, 5 Sandf. 197. Though Judge Denio in Shaw v. Dwight, 27 N. Y. 244 held that an execution returned unsatisfied was necessary. A creditor's bill cannot be sustained where there has been a simple demand of payment, and no execution has been returned unsatisfied. Brock v. Rich, 76 Mich. 644; Pierce v. Rich, 76 Mich. 648.

[11] Brainard v. Van Kuran, 22 Ill. 261; Cf. Loving v. Pairs, 10 Ia. 282; Postlewait v. Howes, 3 Ia. 365; Harrison v. Kramer, 3 Ia. 543; Savery v. Browning, 18 Ia. 246; Beck v. Burdett, 1 Paige 305. Where it is sought to set aside a fraudulent conveyance of real estate and the return of an execution is a necessary prerequisite, the execution must be such that it could be levied on real estate. Behan v. Warfield, 90 Ky. 151.

[12] Weil v. Raymond, 142 Mass. 206; Carver v. Peck, 131 Mass. 291.

proper officer, is a necessary prerequisite to the filing of a Creditors' Bill.[13]

(a) Where it is sought to reach equitable assets of the creditor which cannot be reached at law, judgment and execution returned unsatisfied are necessary to give jurisdiction in equity.[14]

(b) But it is not necessary for the assignee of a judg-

[13] The return of an execution unsatisfied is established as a prerequisite from the earliest times. Angell v. Draper, 1 Vern. 399. Property fraudulently assigned cannot be reached by a creditor's bill based on a judgment merely. An execution in such case so as to become a lien on the property is required. Spear v. Wardell, 2 Barb. Ch. 291; Cf. Wiltshire v. Meerfleet, 1 Edw. Ch. 654. The return of an execution on the return day is a good return for the purposes of a judgment creditor's bill under the statute. Williams v. Hubbard, 1 Mich. 446. A judgment creditor's bill averred that execution had been returned unsatisfied on a specified day. It was demurred to on the ground that it failed to show that the execution was returned as required by law to entitle complainants to maintain the bill. Held that the demurrer did not sufficiently present the objection that the date of the return was Sunday. Kellogg v. Hamilton, 43 Mich. 269.

[14] Russell v. Chicago T. & S. Bk., 139 Ill. 538; Dormueil v. Ward, 108 Ill. 216; Hickling v. Wilson, 104 Ill. 54; Scripps v. King, 103 Ill. 469; Mann v. Ruby, 102 Ill. 348; Chicago D. & V. R. Co. v. St. Anne, 101 Ill. 151; Moshier v. Meek, 80 Ill. 79; Dewey v. Eckert, 62 Ill. 218; Mugge v. Ewing, 54 Ill. 236; McConnell v. Dickson, 43 Ill. 99; Steere v. Hoagland, 39 Ill. 264; Bay v. Cook, 31 Ill. 336; Bigelow v. Andress, 31 Ill. 322; Greenway v. Thomas, 14 Ill. 271; Ishmael v. Parker, 13 Ill. 324; McDowell v. Cochrane, 11 Ill. 31; Miller v. Davidson, 8 Ill. 518; Petway v. Hoskins, 12 Lea 107; Parmelee v. Egan, 7 Paige Ch. 610; Brooks v. Wilson, 53 Hun, 173; Miller v. Sherry, 69 U. S. 237; Hallorn v. Trum, 125 Ill. 247; Rappleye v. International Bk., 93 Ill. 396; Lyon v. Robbins, 46 Ill. 276; George v. Williamson, 26 Mo. 190. A party by his execution at law obtains no vested interest in mere equitable rights unless there are some fraudulent or colorable transfers or some direct trust. Disborough v. Outcalt, 1 N. J. Eq. 298. The general rule is subject to very few exceptions that before a bill can be filed to reach equitable assets, the creditor must first recover a judgment at law or its equivalent, a money decree, and have execution issued and returned unsatisfied. Winslow v. Leland, 128 Ill. 304. If a proceeding is to remove a fraudulent conveyance or incumbrance or other obstructions out of the way of the collection of a debt, the creditor may file his bill as soon as he obtains judgment; but where he seeks to reach the equitable assets of the debtor which are not liable to levy and sale under execution, he must not only obtain judgment at law, but must have execution issued and returned unsatisfied. Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305; Miller v. Davidson, 3 Gilm. 518; Shufeldt v. Boehm, 96 Ill. 560.

ment to cause an execution to be issued and returned *nulla bona* after becoming such assignee of the judgment before he can file a Creditors' Bill, if an execution has been issued on the judgment and return prior to the assignment.[15]

(c) And where it is sought to remove a fraudulent conveyance or incumbrance.[16] But a judgment subsequent to a general assignment for the benefit of creditors does not give the judgment creditor a basis for a bill to set aside a fraudulent conveyance. In such case the assignee is the proper person as plaintiff to attack the fraudulent transfer.[17] A fraudulent recital in a deed standing on record in the name of a judgment debtor does not constitute such an obstruction to the enforcement of the judgment lien as will entitle the judgment creditor to file a bill for its removal.[18] (d) Or recover from a stockholder of a corporation his unpaid stock liability.[19] (e) Or to reach partnership property.[20] (f) Or

[15] Rankin v. Rothschild, 78 Mich. 10; Gleason v. Gage, 7 Paige, 121.

[16] By a judgment a creditor establishes a lien upon all of the debtor's real estate and if the debtor has fraudulently conveyed or incumbered it so as to interpose an obstacle which embarrassed the debtor in his legal proceedings he may file his bill to remove such conveyances or incumbrances. In such case it is not necessary that execution be issued, but is, of course, advisable that execution be issued to avoid a contest with subsequent and execution creditors. Dunham v. Cox, 10 N. J. Eq. 437; and see Hughes v. Noyes, 171 Ill. 575. A fraudulent conveyance cannot be attacked except by a judgment creditor on execution returned unsatisfied. Green v. Tantum, 19 N. J. Eq. 105; but see Scanlan v. Murphy, 51 Minn. 536.

[17] Spring v. Short, 90 N. Y. 538. The assignee may do so. In such case the removal of the conveyance will not subject the property to the payment of the judgment. Geery v. Geery, 63 N. Y. 252; Southard v. Benner, 72 N. Y. 424.

[18] Cornman v. Sidle, 65 Minn. 84.

[19] Under a creditor's bill to recover from stockholders their stock liability, in satisfaction of plaintiff's judgment, it is not competent for the defendant to show that the corporation had property at some other place or locality. A court of equity when its aid is invoked, looks only to the execution, and the return of the officer to whom it was directed. The court will not entertain inquiries as to the diligence of the officer in endeavoring to find property upon which to levy. Baines v. Babcock, 95 Cal. 581; Cf. Jones v. Greene, 68 U. S. 330;

to set aside on assignment as being fraudulent,[21] but where the bill is filed to uphold an assignment it may be

Sturges v. Vanderbilt, 73 N. Y. 384. The obtaining of a judgment and the issuance of an execution thereon and a return thereof unsatisfied are required even though the judgment debtor has surrendered its charter and has ceased to exist. Taylor v. Bowker, 111 U. S. 110. Where a statute provides that if an unlawful division made by a corporation has been made or that it has property which cannot be attached; or is not by law attachable, any judgment creditor may file a bill in equity to procure a decree for the satisfaction of his judgment out of the property the right of action thus conferred is an equitable right and does not accrue until the issue of an execution on the judgment and a return thereof unsatisfied. Taylor v. Bowker, 111 U. S. 110. Proof of the return nulla bona of an execution against a corporation, in an action to enforce the liability of stockholders is not obviated by a sheriff's return stating that he received notice from the president of the company that the property upon which he had levied did not belong to it, and that he had for that reason postponed the sale, and afterwards announced that the sale would not take place, where it does not appear that the sheriff was unable to find any other property than that levied upon. Albright v. Texas, S. F. & N. R. Co., 8 N. M. 422, reversing S. C. 8 N. M. 110. A creditor's bill is an appropriate and proper proceeding where it is sought to reach and appropriate the unpaid capital stock of insolvent corporations. As a general rule the unpaid capital stock of an insolvent corporation has been regarded as a trust fund for the payment of the corporate debts, and this in itself renders a court of equity peculiarly fitted for adjusting and settling the rights of all parties in interest. Hollins v. Brierfield, C. & I. Co., 150 U. S. 371; Clark v. Bever, 139 U.S. 96; Fogg v. Blair, 139 U. S. 118; Stone v. Chisolm, 113 U. S. 302; County of Morgan v. Allen, 103 U. S. 498; Hatch v. Dana, 101 U. S. 205; Terry v. Anderson, 95 U. S. 628; Sawyer v. Hoag, 84 U. S. 610; Ogilvie v. Knox Ins. Co., 63 U. S. 380; Sanger v. Upton, 61 U. S. 56; Montgomery Web Co. v. Dienelt, 133 Pa. St. 585; Messersmith v. Sharon S. Bk., 96 Pa. St. 440; Crandall v. Lincoln, 52 Conn. 73; Gogebic Inv. Co. v. Iron Chief, etc., Co., 78 Wis. 427; Pierce v. Milwaukee C. Co., 38 Wis. 253; Henry v. Vermilion, etc., R. Co., 17 Ohio 187; Miers v. Zanesville, etc., Co., 11 Ohio 273; Tradesman Pub. Co. v. Car Wheel Co., 95 Tenn. 634; Bartlett v. Drew, 57 N. Y. 587; Fort Payne Bank v. Alabama, etc., Co., 103 Ala. 358; Missouri L. M. & S. Co. v. Reinhard, 114 Mo. 218; Hibernia Ins. Co. v. St. Louis, etc., Co., 13 Fed. Rep. 516.

[20] A creditor has no standing in a court of equity as to partnership property until he has acquired a lien, legal or equitable. Crippin v. Hudson, 13 N. Y. 161. It has been held in Iowa that a judgment rendered in an action between a firm and its individual members, fixing the amount due, ordering execution, and providing for the application of the funds in the hands of a receiver and the individual partners, is a final judgment, on which an action to set aside a fraudulent conveyance may be brought. Applegate v. Applegate, (Ia.) 78 N. W. 34.

[21] Where a bill is filed by two firms of creditors against the

by judgment creditors and creditors at large.[22] (g) Or where it sought to reach money due the debtor,[23] (h) or to reach property such as a stock of goods fraudulently sold or transferred as a fraudulent preference,[24] (i) or to reach and remove a fraudulent judgment, or one collusively confessed where no *bona fide* indebtedness existed.[25] (j) Or for relief against fraud generally.[26] (k)

debtor and his assignee to set aside an assignment as fraudulent as against creditors and to apply property to the satisfaction of plaintiff's demands which were simple contract creditors, and their claims not reduced to judgment and subsequently other creditors applied by petition to be made parties to the bill who also charged fraud in the assignment praying that it might be set aside and the property and effects be equally divided among all creditors it was held that a court of equity would give no specific lien to a creditor at large against his debtor further than he has acquired at law. It is only when the plaintiff has obtained a judgment and execution seeking to subject the property of his debtor in the hands of third persons or to reach property not accessible to execution that a legal preference is acquired which a court of chancery will enforce. Day v. Washburn, 65 U. S. 352.

[22] The rule requiring judgment and execution unsatisfied does not apply to a case where a bill is filed to uphold an assignment, in such case the suit may be maintained both by judgment creditors and creditors at large. Spelman v. Freedman, 130 N. Y. 421; Harvey v. McDonnell, 113 N. Y. 526; Preston v. Spaulding, 120 Ill. 208; Goncelier v. Foret, 4 Minn. 1; Holt v. Bancroft, 30 Ala. 193; McDougald v. Dougherty, 11 Ga. 570; Weir v. Tannehill, 2 Yerger 57.

[23] Where plaintiff's claim had not been established by law filed his bill against the debtor on the ground of insolvency and praying that a debt due from a debtor of the debtor might be applied to the payment of the claim it was held that the plaintiff could not recover in the absence of an assignment of the debt to the plaintiff or a lien upon the fund. Smith v. R. R. Co., 99 U. S. 398. Such a bill must be preceded by a judgment at law establishing the measure and validity of the claim for which satisfaction is sought in chancery. Wiggins v. Armstrong, 2 Johns. Ch. 144; Hendricks v. Robinson, 2 Johns. Ch. 296; Greenway v. Thomas, 14 Ill. 271; Mizell v. Herbert, 12 S. & M. 547; Gorton v. Massey, 12 Minn. 145; Skele v. Stanwood, 33 Me. 307; Sexton v. Wheaton, 8 Wheat. 229.

[24] Goembel v. Arnett, 100 Ill. 34; Stone v. Manning, 2 Scam. 530; Bigelow v. Andress, 31 Ill. 322; McConnel v. Dickson, 43 Ill. 99.

[25] Where a judgment is collusively confessed it is where no indebtedness whatever existed, it would be fraudulent, and any party whose interest might be affected could properly attack it. Martin v. Judd, 60 Ill. 78; Phillips v. Demoss, 14 Ill. 410; Ransom v. Jones, 1 Scam. 291; Denton v. Noyes, 6 Johns. 296; Hauer's Appeal, 5 W. & S. 473; Lewis v. Smith, 2 S. & R. 142; Finneran v. Leonard, 7 Allen 54; Field v. Gibbs, Peters C. C. R. 155; Tichout v. Cilley, 3 Vt.

Before creditors are entitled to maintain a bill for the administration of assets of an insolvent firm they must acquire an equitable lien which it is said is done by exhausting their legal remedies, or in some other way.[27] (1) A surety having paid the debt must first reduce his claim to a judgment before coming into a court of equity to set aside a fraudulent conveyance.[28]

§ 156. Grounds of Equitable Relief.—There are two classes of cases in which a plaintiff is permitted to come into a court of equity for relief after he has proceeded to judgment and execution at law without obtaining satisfaction of his debt. In one class the issuing of execution gives to the plaintiff a lien upon the property, but he is compelled to come into a court of equity for the purpose of removing some obstruction fraudulently or inequitably interposed to prevent a sale

415; St. Albans v. Bush, 4 Vt. 58; Pillsbury v. Dugan, 9 Ohio 117; Brown v. Nichols, 42 N. Y. 26; Holbert v. Montgomery's Ex'rs, 5 Dana 11. A creditor may maintain a bill in equity to annul an order fraudulently obtained setting apart a homestead to the debtor's wife, if he has no adequate remedy at law by appeal from such order. Wickersham v. Comerford, 96 Cal. 433.

[26] Even where a bill is filed by a creditor to procure a relief against fraud, a judgment is necessary. Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305; Shufeldt v. Boehm, 96 Ill. 560. In other words, unless the creditor has obtained judgment so as to have a certain claim upon the property of the debtor, he has no concern with such debtor's frauds. Id. Dewey v. Eckert, 62 Ill. 218.

[27] Before creditors can maintain a bill for the administration of the assets of an insolvent firm they must acquire an equitable lien by exhausting their legal remedy, or in some other way. A creditor at large has no standing. Gore v. Kramer, 117 Ill. 176; Puterbaugh v. Elliott, 22 Ill. 157; Coughron v. Swift, 18 Ill. 414; City of Peoria v. Kidder, 26 Ill. 351; Bigelow v. Andress, 31 Ill. 322; Long v. Barker, 85 Ill. 431; Shufeldt v. Boehm, 96 Ill. 560; Dormueil v. Ward, 108 Ill. 216. Where goods are fraudulently obtained and a bill is filed to recover the debt, cancelling the contract of sale for fraud and then to obtain a decree for the payment of the value of the goods, an action at law will lie and equity will not interpose. Gore v. Kramer, supra.

[28] Dewey v. Eckert, 62 Ill. 218; Greenway v. Thomas, 14 Ill. 271; Getzler v. Saroni, 18 Ill. 511; Wiggins v. Armstrong, 2 Johns. Ch. 144; McConnel v. Dickson, 43 Ill. 99. A surety who has paid a debt has no relief in a court of chancery as against a fraudulent conveyance. Must procure judgment exection and file a creditor's bill as any other creditor. McConnel v. Dickson, 43 Ill. 99.

on execution. In the other, the plaintiff comes into an equity court to obtain satisfaction of his debt out of property of the defendant which cannot be reached by execution at law. In the first class the jurisdiction attaches by reason of the lien or claim upon the debtor's property, and in the second class it is by reason of an exhaustion of the legal remedies as shown by the return of the execution.[29] Courts which base the equitable jurisdiction on the ground of the exhaustion of legal remedies, as shown by the rendition of a judgment, the issuance of an execution thereon, and the return thereof unsatisfied, are substantially uniform in holding these three things prerequisites to the equitable jurisdiction of the court in creditors' suits. Those, however, which base the equitable jurisdiction on the lien either of the judgment or execution waive the issuance and return of an execution, as jurisdictional prerequisites, where the purpose of the proceeding is to reach real estate only, as in such case usually the judgment alone constitutes the lien, but require the issuing of an execution where personal property is to be reached.[30]

[29] Beck v. Burdett, 1 Paige 308. The reason for the rule requiring execution lies in the necessity of the plaintiff acquiring a right or title to the debtor's property by the common law proceedings. Mr. Justice Nelson in McElwain v. Willis, 9 Wend. 549. Mr. Chancellor Kent after referring to Angel v. Draper, 1 Vern. 399, and Shirley v. Watt, 3 Atk. 200, in Wiggins v. Armstrong, 2 Johns. Ch. 144, says: "The reason of the rule seems to be that until the creditor has established his title he has no right to interfere, and it would lead to an unnecessary and perhaps a fruitless and oppressive interruption of the exercise of the debtor's rights. Unless he has a certain claim upon the property of the debtor he has no concern with his frauds." See also 1 Dev. Eq. 107; McDermott v. Strong, 4 Johns. Ch. 687. In Michigan it was held in McKibben v. Barton, 1 Mich. 213, that the bill could not be sustained for the reason that the execution had not been levied and hence no lien was required as a basis for the bill.

[30] If the creditor's bill is to reach personal property the issuing of an execution on the judgment is necessary. This is for the reason that the execution constitutes a lien on personal property and not a judgment. Dunham v. Cox, 2 Stock. 437. A creditor's bill cannot be founded on a void judgment. Johnson v. Parrotte, 46 Neb. 51. An action

§ **157. Nature of Lien Required.**—There has been much confusion on the subject of what constitutes a lien in favor of the plaintiff and against the debtor's property, such as will form the basis of an equitable proceeding in the nature of a creditor's bill. The theory is advanced that by the recovery of a judgment and the issuing of an execution thereon a lien is acquired upon the debtor's property enforcible in equity. The difficulty in this contention is that there is no subsisting lien such as attaches in the case of an ordinary judgment, for in such case there could be no alienation except subject to the lien. There could be, of necessity, no lien growing out of the judgment and execution as to equitable assets, and such species of intangible property as are not subject to levy and sale. And it would seem that where neither the legal nor the equitable title to land had ever been in the debtor no lien could attach and form the basis of a creditor's bill or other equitable proceeding in the nature of a creditor's bill. The difficulty above indicated is obviated by basing the equitable jurisdiction upon the broad ground of an exhaustion of legal remedies, rather than the existence of a lien in favor of plaintiff.[31]

based upon a judgment rendered against executors in their representative capacity cannot be maintained to set aside a conveyance by the decedent debtor and fraudulent as to his creditors. Lichtenberg v. Herdtfelder, 103 N. Y. 302.

[31] Where land is bought and paid for by the judgment debtor and the title taken in the name of another with the intent to hinder, delay or defraud creditors it cannot be reached and sold on execution against the debtor. This doctrine is based on the ground that the debtor in such case, in the absence of a statute giving such right, has no legal or equitable estate to which an execution at law could attach. Gilbert v. Stockman, 81 Wis. 602; Garfield v. Hatmaker, 15 N. Y. 475; (overruling Wait v. Day, 4 Denio 439); Wood v. Robinson, 22 N. Y. 564; McCartney v. Bostwick, 32 N. Y. 53; Ocean Nat. Bk. v. Olcott, 46 N. Y. 12; Everett v. Everett, 48 N. Y. 218; Estes v. Wilcox, 67 N. Y. 264; Underwood v. Sutcliffe, 77 N. Y. 58; Hyde v. Chapman, 33 Wis. 391; Kluender v. Fenske, 53 Wis. 118; Pavey v. Am. Ins. Co., 56 Wis. 221; Week v. Bosworth, 61 Wis. 78; Cerney v. Pawlot, 66 Wis. 262; Skinner v. James, 69 Wis. 605; Campbell

Some courts have sustained the jurisdiction of courts of chancery in matters of this nature where there has been a fraudulent placing of the debtor's property beyond the reach of creditors on the general ground of equitable jurisdiction in case of fraud.[32]

§ **158. Reasons for Rule Requiring Judgment, Etc.**—Various reasons have been assigned as to the necessity of obtaining judgment as a condition precedent to the filing of a creditor's suit. It has been said that the judgment is required in order to establish a lien upon the property sought to be reached, and particularly so where there has been a fraudulent conveyance or transfer, and to reach the property thus alienated is the purpose of the suit. This doctrine is based upon the idea that a lien is a necessary basis for equitable jurisdiction. Another reason assigned for the rule has been that a judgment, execution and return *nulla bona* are required in order to establish the exhaustion of legal remedies, and thus lay the foundation of an equitable proceeding. Still another view taken of this matter is that the creditor's suit is, in reality, but an ancillary proceeding in aid of the common law action.

Other courts have contended that a judgment was essential in order that the amount of the plaintiff's claim might thus be fixed and determined and his right to recover established at law. In other words, that a plaintiff has no right of action in a court of equity unless he

v. Campbell, 70 Wis. 311; Watters v. McGuigan, 72 Wis. 155; Gettleman v. Gitz, 78 Wis. 439; Griffin v. Nitcher, 57 Me. 270; Hartshorn v. Eames, 31 Me. 93. Where one person pays for land and takes title in another there is no title to which a judgment here can attach. Blackburn v. Lake Shore Traffic Co., 90 Wis. 362; Miner v. Lane, 87 Wis. 348; Wilson v. Sax, 54 Pac. 46. No lien is acquired upon chattels in the hands of an assignee for creditors by an attempted attachment against the assignor or garnishment of the assignee. Wilson v. Sax (Mont.), 54 Pac. 46. There must be a specific lien by attachment, execution or otherwise. Id.

[32] Loomis v. Tifft, 16 Barb. 541; Shellington v. Howland, 53 N. Y. 371, 375.

shall first establish the justice, and certainty thereof, by first recovering a judgment thereon. However much courts may have differed in their reasons assigned for the rule, the opinion is well nigh universal that a common law judgment is an essential prerequisite to an equitable proceeding in matters of the nature under consideration, except where the statute has waived the necessity by changing the rule.

Another ground upon which this doctrine is based is that a claim which is purely legal involves a trial at law by jury and to maintain a bill for the enforcement of such right without reducing the claim to a judgment would deprive the debtor of a trial by jury. A jury trial in an equity proceeding is not a constitutional right, but it is in an action that is purely legal.[33]

A suit by a simple contract creditor under the provision of the statute to have a conveyance by a debtor made in contemplation of insolvency adjudged to be an assignment for the benefit of all of the creditors of the debtor involves an element of trust which a court of equity alone can enforce, and for this reason the right of trial by jury granted by the constitution has no application to the case.[34]

[33] A mere contract creditor cannot go into equity to enforce his legal demands, or reach an equitable estate before he has exhausted his remedy at law. Detroit Copper & B. R. M. V. Ledwidge, 162 Ill. 305; McConnel v. Dickson, 43 Ill. 99; Durand v. Gray, 129 Ill. 9; Russell v. Chi. T. & S. Bk., 139 Ill. 538. One of the grounds upon which this doctrine is based is that a claim which is purely legal involves a trial at law by a jury and to maintain a bill for the enforcement of such right without reducing the claim to a judgment would deprive the debtor of a jury trial. Detroit Copper & B. R. M. v. Ledwidge, supra; Gore v. Kramer, 117 Ill. 176; Scott v. Neely, 140 U. S. 106; Swan Land Co. v. Frank, 148 U. S. 603.

[34] Early Times Distilling Co. v. Zeiger, 49 Pac. Rep. 723; citing Cates v. Allen, 149 U. S. 451; Scott v. Neely, 140 U. S. 106; Peters v. Bain, 133 U. S. 670; Barton v. Barbour, 104 U. S. 126; Shields v. Thomas, 59 U. S. (18 How.) 253; Consolidated T. L. Co. v. Kansas C. V. Co., 45 Fed. Rep. 7. The fact that simple contract creditors of a corporation have instituted garnishment proceedings under the Michigan statute making the garnishee

§ **159. General Creditor Joining with Judgment Creditor, Effect of.**—Where the title to the property was never in the debtor and a bill is filed by a judgment creditor and a general creditor to reach property owned by the debtor, but the title to which is in the name of his wife, to prevent his creditors from subjecting it to the payment of their claim, it has been held that the debt of the judgment creditor should be charged upon the land and that the debt of the general creditor could not be. This is by reason of the fact that rights of the joint plaintiffs are several. While the proceeding is joint the right of recovery and the evidence to sustain such right are individual.[35]

The requirement of a judgment is not obviated by an amendment to the bill adopting the amount admitted by the answer, which is less than is claimed in the bill.[36]

§ **160. Attachment as a Basis of Suit.**—The courts are not entirely in harmony as to whether an attachment levied upon property forms a sufficient basis for a creditor's bill. Courts which make the jurisdictional basis depend upon the supposed lien of the judgment are pretty uniform in holding, by analogy, that the lien of the attachment forms a sufficient basis for the filing of a creditor's bill. The theory is that should the property go to sale under the attachment with the legal title clouded an advantageous sale would not be realized.[37]

personally responsible on which there is no lien created upon the property is not a foundation for a creditor's bill. Childs v. N. B. Carlstein Co., 76 Fed. Rep. 86.

[35] Haggerty v. Nixon, 26 N. J. Eq. 42.

[36] In addition to an acknowledged debt there must be an interest in the property, or a lien thereon, created by contract, or some distinct legal proceeding. England v. Russell (C. C. S. D. Ohio) 71 Fed. Rep. 818.

[37] Taylor v. Robinson, 7 Allen 253; Meissner v. Meissner, 68 Wis. 336; Lopez v. Merchants & Farmers Nat. Bk., 18 App. Div. 427, 46 N. Y. Supp. 91; Benham v. Ham, 5 Wash. 128. Where land is conveyed absolute in form, but is in fact security for money, it may be attached in a suit against the grantor as mortgaged prop-

§ 161. Exhaustion of Legal Remedy Must be Complete.—Where the equitable jurisdiction is based upon the exhaustion of legal remedies and not upon the lien of a judgment or execution, it is not sufficient that execution runs only against personal property, unless it is averred that the debtor has no real estate liable to execution. If the plaintiff seeks aid as to real estate he must show a judgment creating a lien thereon, and if he seeks aid as to personal property he must show an execution giving him a legal preference or lien thereon. A judgment binding real estate only, or an execution binding personal property only, is not such an exhaustion of legal remedies as the law contemplates. In either case the debtor *non constat* might have an abundance of the other species of property.[38]

erty, and under such attachment and the lien thereby secured may maintain a suit in equity to test the legality of the mortgages. But in such case a judgment and execution are not required. Evans v. Laughton, 69 Wis. 138. An attaching creditor having a lien is entitled to attack the fraudulent transfers of his debtor. People v. Van Buren, 136 N. Y. 252; Perry v. Sharpe, 8 Fed. Rep. 15; Mansur & T. Imp. Co. v. Jones, 143 Mo. 253. An attaching creditor may attack a judgment fraudulently confessed. People v. Van Buren, 136 N. Y. 252; Keller v. Payne, 16 N. Y. S. R. 245; Blum v. Schram, 58 Tex. 524. Generally a creditor's suit cannot be maintained by an attaching creditor until he has recovered judgment. Tennent v. Battey, 18 Kan 324. Where after the filing of the original bill a judgment was rendered in attachment, and shown by an amended bill, and a decree for the payment of the judgment rendered it was held that the decree was wrong because no execution was issued on the judgment. Manchester v. McKee, 4 Gilm. 511; Heacock v. Durand, 42 Ill. 230; Steere v. Hoagland, 39 Ill. 264. An attachment for money only against an absconding debtor is not a basis for a creditors' bill for the reason that the judgment can be enforced only against the attached property. Capital City Bk. v. Parent, 134 N. Y. 527. An attaching creditor cannot maintain a proceeding in equity before judgment, in aid of attachment to reach property fraudulently conveyed, unless the relief which the action at law will afford is inadequate. Hill v. Denney, 106 Ia. 726.

[38] An execution against the personal property merely is not sufficient basis for a creditors' bill. Marsh v. Pike, 10 Paige Ch. 595. To sustain a bill where the execution runs only as to personal property there must be an averment that the judgment debtor had no real estate liable to execution at the time of issuing the execution or at the time of filing the bill. Coe v. Whitbeck, 11 Paige Ch. 42. If the

§ 162. There Must be an Existing Lien.—Where the equitable jurisdiction is based upon the ground that the plaintiff has obtained a judgment which has become a lien on the debtor's property, and the lien of the judgment has expired and the debtor is dead, a purchaser of the judgment has no standing in a court of equity to attack a fraudulent conveyance of such deceased debtor and subject his land to the payment of the judgment. A judgment of this kind neither shows a lien nor an exhaustion of legal remedies, as a jurisdictional fact.[39]

purpose of the plaintiff is to reach real estate he must show a judgment creating a lien thereon, and if his purpose is to reach personal property he must show an execution giving a lien thereon, and which he is at law unable to satisfy. Brinkerhoff v. Brown, 4 Johns. Ch. 671; Williams v. Brown, 4 Johns. Ch. 682; McDermott, v. Strong, 4 Johns. Ch. 687; Shaw v. Dwight, 27 N. Y. 244; Spader v. Davis, 5 Johns. Ch. 280; McElwain v. Willis, 9 Wend. 548; Beck v. Burdett, 1 Paige Ch. 305; Clarkson v. De Peyster, 3 Paige Ch. 326; Dix v. Briggs, 9 Paige Ch. 595; Coe v. Whitbeck, 11 Paige Ch. 42. Legal remedy must be exhausted against an insolvent corporation before equity will entertain jurisdiction. Adee v. Bigler, 81 N. Y. 349. And the fact that an insolvent corporation has conveyed its property in contravention of this statute is not ground for equitable jurisdiction until legal remedies are exhausted. Do. Cf. Dunlevy v. Tallmadge, 32 N. Y. 457; Beardsley v. Foster, 36 N. Y. 561; Ocean Nat. Bk. v. Olcott, 46 N. Y. 12; McElwain v. Willis, 9 Wend. 548. Before a creditor's bill can be sustained all legal remedies must be exhausted. McCartney v. Bostwick, 52 N. Y. 53; Beardsley, etc. v. Foster, 36 N. Y. 561; Produce Bk. v. Morton, 67 N. Y. 199; Estes v. Wilcox, 67 N. Y. 264; Wiggins v. Armstrong, 2 Johns. Ch. 144.

[39] Lakenan v. Robards, 9 Mo. App. 179. If the time has elapsed within which a judgment lien would have expired if there had been any, a court of chancery will not enforce the judgment against equitable assets. Hall v. Green, 60 Miss. 47. A judgment in some states is held not to be a lien upon property purchased by the judgment debtor and conveyed to his wife. Smith v. Ingles, 2 Ore. 43; Howland v. Knox, 59 Ia. 46. A judgment creditor who has allowed the lien of his judgment to expire, upon lands conveyed by the husband to the wife, cannot question the validity of the conveyance on the ground that it is in fraud of other creditors or was made without the intervention of a trustee. Long v. McConnell, 158 Pa. 573; Baxter v. Allen, 77 Pa. St. 468; Judson v. Lyle, 28 Leg. Int. 140; Haak's Appeal, 100 Pa. 59; Armington v. Rau, 100 Pa. 165; but see Arbuckle Bros. Coffee Co. v. Wenar, 77 Tex. 43. It should be noticed in this connection that the lien of a levy on an execution to a foreign county will not continue beyond seven years from the last day of the term

A discharge of the debtor in a proceeding in bankruptcy does not affect a lien procured on a judgment prior to the bankruptcy proceedings.[40]

§ 163. General Creditor Has no Standing.—Only in a few exceptional cases, and those principally of statutory origin, has a general creditor the right to invoke the aid of a court of equity as against his debtor.[41]

In some states, under certain conditions and circumstances, the statute gives a creditor an equitable remedy without first having exhausted the ordinary legal remedies, but, most usually, in such cases the suit is maintained in behalf of all creditors and the property or fund is to be regarded as trust property or a trust fund.[42]

at which judgment is rendered. So that a creditor's bill could not be based on a judgment when the lien had ceased to exist. Weis v. Tiernan, supra; Ewing v. Ainsworth, 53 Ill. 464; James v. Wortham, 88 Ill. 69. (See Stat. of 1872 as to change in time when lien commences.)

[40] Oliphant v. Hartley, 32 Ark. 465.

[41] The North Hudson M. B. & L. As. v. Childs, 86 Wis. 292; Reubens v. Joel, 13 N. Y. 488; Rinchey v. Stryker, 28 N. Y. 45; Lewis v. Lanphere, 79 Ill. 187; Griswold v. Sundback, 4 S. D. 441; Putney v. Whitmire, 66 Fed. Rep. 385. And so a bill cannot be maintained against fraudulent grantees by a creditor for an account of rents and profits, or to restrain waste, or enjoin a sale, before the recovery of a judgment or making an attachment. Taylor v. Robinson, 7 Allen 253. A simple contract creditor cannot attack a fraudulent transfer of his debtor until the recovery of judgment and the issue and return of execution. Spelman v. Freedman, 130 N. Y. 421; Dunlevy v. Tallmadge, 32 N. Y. 457; Adee v. Bigler, 81 N. Y. 349; Adsit v. Butler, 87 N. Y. 585; Vietor v. Lewis, 53 N. Y. Supp. 944; Nugent v. Nugent, 70 Mich. 52. A creditor at large at the time of a fraudulent conveyance who has no specific lien shares ratably with the other creditors in the proceeds of sale. Robinson v. Stewart, 10 N. Y. 189. In Alabama the general creditors of an insolvent attachment debtor cannot maintain a bill to have declared void a sale of attached property as perishable, under Code, Sec. 2958, as the title to the property is in the attachment debtor if no title passed by the sale. McCreery v. Berney Nat. Bk. (Ala.) 22 So. 577.

[42] When the statute gives a creditor by a suit in equity the right to lay hold of and appropriate in payment of his debt any property title or interest of the debtor which may be of such a kind or in such condition or situation as not to be within the the reach of process at common law, a judgment is not required. Crompton v. Anthony, 13 Allen 33; Barry v. Abbot, 100 Mass. 396. Under Ch. 206 of the Statute of 1851 of Massachusetts it was provided that the supreme judicial court should have jurisdiction in equity upon a bill of

§ **164. A Money Decree Sufficient.**—A decree in chancery for the payment of money is in effect the same as a judgment at law, and a creditor's bill may be based thereon.[43]

§ **165. Application of Rule to Injunctions Against Debtor.**—The rule of law requiring a judgment at law as a foundation for a creditor's bill has also been applied to that class of proceedings in equity where it is sought by injunction to restrain one who is about to dispose of his property for the purpose of defrauding his creditors. The reason for the rule in its application to creditors' bills applies with still greater force where it is sought to restrain the alienation of property by the debtor.[44]

any creditor to reach and apply in payment of a debt due from any debtor not residing in that state any property, right, title or interest, legal or equitable of such debtor within the state which could not be attached or taken on execution in a suit at law against the debtor. In many other states a remedy in equity is given to general creditors under certain limitations and restrictions as in the case of proceedings against insolvent corporations. The provision of the Massachusetts statute for reaching and applying in satisfaction of a debt the equitable assets of a debtor, (Gen. Stat. Ch. 113, Sec. 2, cl. 11) is copied from Stat. of 1851, Ch. 206, and Stat. of 1858, Ch. 34, and do not require a judgment at law and return of an execution unsatisfied as a basis of an equitable action. Barry v. Abbot, 100 Mass. 396; Silloway v. Columbia Ins. Co., 8 Gray 199; Sanger v. Bancroft, 12 Gray 365; Moody v. Gay, 15 Gray 457; Crompton v. Anthony, 13 Allen 33; Tucker v. McDonald, 105 Mass. 423. A creditor without judgment cannot maintain an equitable action to subject the interest of the debtor in any property in the hands of a third person to the satisfaction of the debt, under Iowa Code, Sec. 3150, authorizing such a proceeding "at any time after the rendition of a judgment." Ware v. De Lahaye, 95 Ia. 667.

[43] A money decree stands on the same footing as a judgment at law. Winslow v. Leland, 128 Ill. 304, 338; Weightman v. Hatch, 17 Ill. 281; Farnsworth v. Strasler, 12 Ill. 482. A fraudulent conveyance may be removed out of the way of a decree for money as well as a judgment at law. Weightman v. Hatch, 17 Ill. 281. Where it appeared that a decree for a certain sum of money was rendered against an insolvent and that such insolvent conveyed his real estate to hinder and delay creditors, the bill was held to be sufficient. Farnsworth v. Strasler, 12 Ill. 482. A decree for the payment of a money stands on the same footing as a payment at law.

[44] Shufeldt v. Boehm, 96 Ill. 560. In this case it was alleged that the debtor had fraudulently confessed a judgment in favor of one to whom he was not in-

A creditor of a fraudulent grantor in a deed intended to defraud creditors cannot, before judgment upon his claim, maintain a bill in equity against the parties to the fraudulent conveyance for the purpose of obtaining an account for rents and profits of the grantee and restrain him from committing waste or parting with the title, or from restraining the grantor for selling or assigning a note taken by him for the ostensible price of the land.[45]

§ **166. Jurisdiction not Conferred by Supplemental Bill.**—Where a court of equity has no jurisdiction at the time the bill is filed by reason of the fact that the plaintiff is not a judgment creditor, jurisdiction cannot be subsequently conferred by the filing of a supplemental bill setting up a subsequently acquired judgment. The supplemental bill falls with the original bill, and the original bill stands or falls on the condition of things existing at the time it is filed.[46]

debted, upon which a levy was made upon the property of the debtors, and that attachments had also been levied upon the same property, and that before judgment could be obtained upon plaintiff's demands the property of the debtor would be exhausted under the confessed judgments and attachments, praying for an injunction and restraining order. It was held that in the absence of a judgment as a basis for the bill in equity the injunction should be refused. The decision was based upon the ground that the plaintiff's demand was not of an equitable nature; that the property sought to be reached was in no sense an equitable estate; that every consideration of public policy required an adherence to the rule requiring judgment before the institution of suits of this nature; and that any other rule would be a temptation to selfish and avaricious creditors by the institution of suits to obtain an unjust advantage over other creditors, and oppress the debtor. And see also Phelps v. Foster, 18 Ill. 309; Bigelow v. Andress, 31 Ill. 322; McNab v. Heald, 41 Ill. 326; McConnel v. Dickson, 43 Ill. 100; Horner v. Zimmerman, 45 Ill. 14.

[45] Taylor v. Robinson, 7 Allen 253.

[46] Morrison v. Shuster, 1 Mackey (D. C.) 190. On a supplemental bill no relief can be had on a cause of action which did not exist when the original was filed. Heffron v. Knickerbocker, 57 Ill. App. 339; Dan. Ch. 1515 Notes. Where a general creditor had filed his bill for relief against the judgment alleged to be fraudulent he was permitted to file a supplemental bill showing that after the commencement of the suit he had obtained judgment and sued out execu-

And so is a bill fatally defective where it shows that a part of the indebtedness upon which the bill is based has not been reduced to a judgment.[47]

§ **167. Exceptions to the Rule, Requiring Judgment, Etc.**—But it must not be understood that the above rule is inexorable and has no exceptions. Thus if it appears that for any reason no judgment against the debtor can be obtained it will be excused as a preliminary to a creditor's suit. The reason for the enforcement of the rule falls *ex necessitate* in such case.

(a) An exception to the rule exists where it is impossible by reason of the death of the debtor to obtain judgment, and the suit cannot be further prosecuted against his estate or personal representatives by reason of insolvency. The principle involved in this execption is that where a party has done all that is possible for him to do to prepare his case for equitable cognizance he is not to be denied access to the only tribunal capable of granting relief.[48]

tion thereon. Edgar v. Clevenger, 2 N. J. Eq. 258.

[47] Hood v. Saunders, 11 Colo. 106.

[48] The national Tradesmen's Bk. v. Wetmore, supra; Chautauqua Co. Bk. v. White, 6 N. Y. 236; Scott v. McMillin, 1 Littel 302; Gardner v. Gardner, 17 R. I. 751. Without judgment a creditor may maintain a bill against the executor of an insolvent estate and devisee for an account of the assets, and to subject the land to the payment of the debt. 1873, Reeder v. Speake, 4 S. C. 293. And see generally Offutt v. King, 1 MacArthur 312; Beverly v. Rhodes, 86 Va. 415; Mallory v. Vanderbilt, 4 Abb. N. C. 127. If a defendant is both the administratrix of the deceased, and holding the fraudulent title, and the estate being insolvent, a creditor at large may maintain his action in equity for relief. Spicer v. Ayres, 2 Thomp. & C. (N. Y.) 626. A judgment and execution are essential precedents to a creditor's bill and as a general thing the same rule applies to actions in equity where relief is in the nature of a creditor's bill but this rule does not extend so far as to deny the intervention of equity where the situation is such as to render it impossible to obtain judgment and execution. Nat. Tradesmen's Bk. v. Wetmore, 124 N. Y. 241; Natl. Tube Wks. v. Ballou, 146 U. S. 517; Spencer v. Armstrong, 12 Heisk 707. An exception does exist where the claim is against the estate of a deceased insolvent debtor. Austin v. Bruner, 169 Ill. 178; and so also where it is impossible to get judgment. Id.

Where the debtor is dead and his estate is insolvent of course no judgment can be obtained, and there is no legal remedy.[49]

[49] As a rule in order to file a creditor's bill there must be a judgment and execution returned nulla bona. But this, like all rules, has its exceptions, as where the proceeding is against an insolvent estate. In this case an execution is not required. Steere v. Hoagland, 39 Ill. 264 S. C., 50 Ill. 377; McDaniel v. Cochrane, 11 Ill. 31; Bay v. Cook, 31 Ill. 336. Where a fund is only accessible to a court of chancery and cannot be reached at law and the debtor is dead creditors may resort to a court of chancery in the first instance, without recovering a judgment. Steere v. Hoagland, 39 Ill. 264, S. C. 50 Ill. 377; O'Brien v. Coulter, 2 Blackf. 421; Smith v. Sheppar's heirs, 2 Hay 163, p. 349 Battle's Ed. In the above case (Steere v. Hoagland) the court say: "And they (the authorities) seem to as fully establish, as an exception to the rule that, in case of a deceased debtor, as a judgment and execution against the executor or administrator would be unavailing in such cases, the creditor may resort to a court of chancery in the first instance, and, we think, especially so when it appears that the estate is insolvent and that the debt could not be paid in the ordinary course of administration." Ordinarily an execution must issue on a judgment before a court of equity will entertain a bill to reach real estate in which the judgment debtor has not such an interest as can be sold on execution. But in proceedings against intestate estates which are insolvent a resort to equity may be had without such preliminary step. McDowell v. Cochran, 11 Ill. 31; Welch v. Wallace, 3 Gilm. 490. A creditor in such case is not required to petition the probate court to compel the administratrix to sell land to pay the debt. The statute only recognizes the right of an administrator to sell lands of which the intestate died seized. But in such a suit the administrator is a necessary party. Id. A creditor who has proved his claim against an estate may bring an action to set aside a fraudulent conveyance of land paid for by the deceased, but conveyed to another, without judgment and execution. Allen v. McRae, 91 Wis. 226. Ordinarily an execution must be returned unsatisfied before a resort to a court of equity to reach real estate in which the judgment debtor has not such an interest as can be sold on execution. An exception to this rule, however, exists where the proceeding is against an intestate's estate, which is insolvent, as in such case no execution can issue. Bay v. Cook, 31 Ill. 336. As a general rule a judgment is a pre-requisite to the filing of a creditor's bill, but this, of course, has an exception where the claim is against an insolvent's estate. Dormueil v. Ward, 108 Ill. 216; Chicago D. & V. R. Co. v. Town of St. Anne, 101 Ill. 151; Scripps v. King, 103 Ill. 469; Shufeldt v. Boehm, 96 Ill. 560; Albright v. Herzog, 12 Ill. App. 557. An execution cannot run against an administrator. An exception to the rule requiring an execution issued and returned no property found is recognized where the debtor is dead. This grows out of the fact that an execution will not issue against the legal representatives of a deceased person. Kennedy v. Creswell, 101 U. S. 641; Thompson v. Brown, 4 Johns. Ch. 619; Hagan v. Walker, 55

Under the statute in some states a creditor of a deceased insolvent debtor may file a bill in behalf of himself and other creditors seeking to attack a fraudulent transfer, without having obtained judgment.[50]

(b) Where it appears that the debtor has made a general assignment for creditors which is fraudulent, and the assignor is a non-resident and there are no means of procuring a personal judgment against him, a bill may be maintained by a general creditor, in which it is sought to set aside the assignment. This is based on the ground that there can be no judgment obtained against the debtor by reason of his non-residence, and also that no attachment can be sustained for the reason that his property is in the hands of an assignee.[51]

(c) Where it clearly appears by proper allegations and proof that a judgment would have been useless and unavailing, as where the debtor is notoriously insolvent. This exception prevails in the United States Supreme Court and in New York, though the general rule is well established and maintained in each jurisdiction.[52]

U. S. 29. A judgment and execution are not required where from the nature of the case a judgment cannot be recovered as where the debtor is a corporation and the corporation has been dissolved. United Glass Co. v. Vary, 152 N. Y. 121; Hardman v. Sage, 124 N. Y. 25. And so also where the prosecution of the suit to recover judgments has been enjoined. Shellington v. Howland, 53 N. Y. 371; Huntington v. Blun, 143 N. Y. 511. And where a judgment is prohibited by law. Id.

[50] Cooke v. Chase (Sup. Ct.) 37 N. Y. Supp. 124; 72 N. Y. S. R. 731. (See N. Y. Laws 1889, Ch. 487.)

[51] Patchen v. Rofkar, 12 App. Div. 475, 42 N. Y. Supp. 35.

[52] Where the rule obtains that legal remedies must have been exhausted as a condition precedent to the filing of a creditor's bill while the general rule is that a judgment and execution returned nulla bona is the proper evidence of such exhaustion of legal remedies it is not the exclusive mode of establishing that fact. Thus where it is alleged and shown that such a proceeding would be useless and unavailing as in the case of the notorious insolvency of the debtor, the judgment may be dispensed with. National Tube Wks. v. Ballou, 146 U. S. 517; and see Adsit v. Butler, 87 N. Y. 585; Estes v. Wilcox, 67 N. Y. 264; Shellington v. Howland, 53 N. Y. 371; Kincaid v. Dwinelle, 59 N. Y. 548; Terry v. Tubman, 92 U. S. 156; McCartney v. Bostwick, 32 N. Y. 53; National Tradesmen's Bk. v. Wetmore,

It has also been held in a few cases, but based upon sound reasoning, that where it satisfactorily appears that the issuance of an execution and a return thereon would be an idle ceremony by reason of the insolvency of the judgment debtor it may be dispensed with.[53]

124 N. Y. 241; Cairns v. Ingram, 8 Pa. Supr. Ct. 514; Case v. Beauregard, 101 U. S. 688. A creditor without judgment cannot maintain a bill to subject land conveyed by the debtor, and for a receiver of the rents and profits thereof, although the grantees are insolvent and the land has been attached as the property of the debtor. Clark v. Raymond, 86 Ia. 661. The rule in the United States courts is stated to be as follows: "Where it is sought by equitable process to reach equitable interests of a debtor the bill, unless otherwise provided by statute must set forth a judgment in the jurisdiction where the suit in equity is brought, the issuing of an execution thereon, and its return unsatisfied, or must make allegations showing that it is impossible to obtain such a judgment in any court within such jurisdiction." National Tube Wks. v. Ballou, supra, citing Taylor v. Bowker, 111 U. S. 110; Webster v. Clark, 25 Me. 313; Parish v. Lewis, Freeman's Chy. 299; Brinkerhoff v. Brown, 4 Johns. Ch. 671; Dunlevy v. Tallmadge, 32 N. Y. 457; Terry v. Anderson, 95 U. S. 628; Smith v. Railroad Co., 99 U. S. 398, 401; Hawkins v. Glenn, 131 U. S. 319, 334; McLure v. Benceni, 2 Ired. Eq. 513, 519; Farned v. Harris, 11 S. & M. 366, 371; Patterson v. Lynde, 112 Ill. 196. The practice in the federal courts is to require a judgment as a foundation for a proceeding to set aside a fraudulent conveyance even though the state statute may authorize such suit without judgment. Hollins v. Brierfield C. Co., 150 U. S. 371; Cates v. Allen 149 U. S. 451. The grounds upon which the Illinois decisions are based are that creditors' bills are purely of equitable cognizance in which there is no right to a trial by jury (Heacock v. Hosmer, 109 Ill. 245; Flaherty v. McCormick, 113 Ill. 538), and the establishment of insolvency of the debtor, as by an assignment, without a judgment and execution would deprive the debtor of a trial by jury in the ascertainment of the amount due. In other jurisdictions, however, the insolvency of the debtor is held sufficient excuse for not doing so. Tully v. Curtain, 54 Fed. Rep. 43; Kalmus v. Ballin, 52 N. J. Eq. 290; Dittman v. Weiss Bros., 87 Tex. 614 (see Stat.). Insolvency alone is not sufficient in Illinois to excuse judgment and execution. Greenway v. Thomas, 14 Ill. 271; Patterson v. Lynde, 112 Ill. 196; but if coupled with some reason why judgment cannot be obtained it is. Id.

[53] Turner v. Adams, 46 Mo. 95, citing Merry v. Fremon, 44 Mo. 518; Bay v. Cook, 31 Ill. 336; McDowell v. Cockran, 11 Ill. 31; Postlewait v. Howes, 3 Ia. 365; Plume & A. Mfg. Co. v. Baldwin, 87 Fed. Rep. 785. It is not necessary in Iowa to sustain a creditor's bill to subject property to the payment of creditors to show an execution returned nulla bona where the debtor is otherwise shown to be insolvent. Strong v. Lawrence, 58 Ia. 55; Postlewait v. Howes, 3 Ia. 365; Miller v. Dayton, 47 Ia. 312; Gwyer v. Figgins, 37 Ia. 517; Gordon v. Worthley, 48 Ia. 429.

Following the same principle and based upon the same doctrine, where it appears that the judgment debtor has no property other than real estate which has been fraudulently conveyed, it has been held that an execution and return need not be shown.[54]

In an action to set aside a conveyance as being fraudulent as to creditors it is not necessary for an execution to be returned nulla bona where the pleadings and evidence show that the debtor had no other property and that the issuance of an execution would have been a vain thing. The law will not require parties to incur expense and delay when no benefit arises therefrom. Smalley v. Moss, 72 Ia. 171.

[54] Cornell v. Radway, 22 Wis. 260; Sanderson v. Stockdale, 11 Md. 563; Cook v. Johnson, 12 N. J. Eq. 51; Shaw v. Dwight, 27 N. Y. 244; Payne v. Sheldon, 63 Barb. 169; Brinkerhoff v. Brown, 4 Johns. Ch. 671. Where a party seeks to remove a fraudulent conveyance out of the way of his execution he may file his bill as soon as he obtains judgment and before he has made any attempt to satisfy his judgment out of other property of the defendant. Weightman v. Hatch, 17 Ill. 281; Beach v. Bestor, 45 Ill. 341. On a creditor's bill to remove a fraudulent conveyance, execution issued and returned is not necessary. Fusze v. Stern, 17 Ill. App. 429. The issuance of an execution is not necessary, where the proceeding is to set aside a fraudulent conveyance. Redden v. Potter, 16 Ill. App. 265. A bill to remove a fraudulent conveyance out of the way of an execution may be filed as soon as judgment is rendered. Dillman v. Nadelhoffer, 162 Ill. 625. See also, Weightman v. Hatch, 17 Ill. 281; Newman v. Willets, 52 Ill. 98; Amick v. Young, 69 Ill. 542; Wis. Granite Co. v. Gerrity, 144 Ill. 77; Blair v. Ill. Steel Co., 159 Ill. 350. Where a party desires to remove a fraudulent conveyance or incumbrance out of the way of an execution he may file his bill in equity as soon as he obtains judgment. Miller v. Davidson, 3 Gilm. 518. In Alabama a simple contract creditor may maintain an action to reach and subject property alleged to have been fraudulently conveyed by his deceased debtor on an averment of deficiency of legal assets. Merchants' Nat. Bk. v. McGee, 108 Ala. 304. A creditor seeking to reach the equitable estate of his debtor which cannot be reached at law, must first recover a judgment and have execution issued and returned unsatisfied and the proof of such judgment and execution must be made unless admitted. Russell v. Chi. Trust & Savings Bk., 139 Ill. 538. If he seek to satisfy his debt out of an equitable estate not liable to an execution at law then he must exhaust his legal remedy by getting a judgment and an execution returned, no property found, before he can resort to equity. Miller v. Davidson, 3 Gilm. 518; Manchester v. McKees Ex'rs, 4 Gilm. 511; Ballentine v. Beale, 3 Scam. 203; Farnsworth v. Strasler, 12 Ill. 482; Ishmael v. Parker, 13 Ill. 324. The general rule is subject to a very few exceptions, that before a bill can be filed to reach equitable assets, the creditor must first recover a judgment at law or its equivalent and money decree and have execution issued and returned unsatisfied. Winslow v. Leland, 128 Ill. 304.

(d) Or where the debtor is an insolvent corporation and has ceased to exist.[55]

(e) Or where the statute creates a lien on the lands of a decedent and subjects them to the payment of his debts.[56]

(f) And so where the debtor's property is in the hands of an assignee and constitutes a fund for the benefit of creditors, which a court of equity only can reach, a creditor has a right to ask the aid of the court without judgment and execution. In such case, however, no preference can be given to one creditor over another. The objection that plaintiffs did not procure judgment as a foundation for the bill will be considered as waived if no objection is raised on that ground.[57]

Or where property is held in trust for the payment of creditors, for in such case the suit is rather in the nature of a bill to enforce a trust than a creditor's suit.[58]

[55] In Illinois in a proceeding against the stockholders of an insolvent corporation that had ceased to exist and consequently no judgment could be obtained against it creditors are allowed to proceed in equity without judgment. It was said that the unpaid subscriptions were a trust fund for the payment of the debts of the corporation, the corporation being a trustee, and therefore when the corporation ceased to exist the court, upon the principle that a trust shall not fail will take jurisdiction. Patterson v. Lynde, 112 Ill. 196; citing Terry v. Anderson, 95 U. S. 628; see also Blanc v. Paymaster M. Co., 95 Cal. 524.

[56] Haston v. Castner, 31 N. J. Eq. 697. In this case the bill was sustained on the ground that the indebtedness of plaintiff was made a lien by statute upon the land of a deceased debtor, or at least a "burden" on the lands, and it appeared that the lands sought to be reached had been fraudulently conveyed by the deceased debtor.

[57] Day v. Washburn, 65 U. S. 352. In this case an assignment was made in trust for the benefit of creditors, and in such case if a bill had been filed to enforce the trust no judgment or execution would have been necessary as preliminary to the jurisdiction of the court. This would not be true, however, if the assignment made a preference and if the bill is filed to set aside the assignment and defeat preferences given therein. A judgment and execution would have been required before filing the bill and not doing so would have been fatal if the objection had been taken in time.

[58] Where property is held in trust for the payment of creditors it may be reached by such creditors without judgment and execution. Miller v. Davidson, 3 Gilm. 518; Greenway v. Thomas, 14 Ill. 271. In such case it is a suit to enforce a trust rather

(g) While the decisions are not uniform upon the question, it has been held that an attachment, presumably by reason of the lien thereof, is a sufficient foundation for a creditor's bill to reach property fraudulently conveyed to hinder, delay and defraud creditors, if the purpose of the transfer is to remove the attached property from the jurisdiction of the officer having it in custody. This would not be so where the proceeding is to reach equitable assets.[59]

than a creditor's bill. Weightman v. Hatch, 17 Ill. 281; Newman v. Willetts, 52 Ill. 98; Justice v. Scott, 4 Ired. Eq. (N. C.) 108; Beach v. Bestor, 45 Ill. 341. Another exception is where a creditor has a trust in his favor in which case equity has original jurisdiction independent of any legal proceedings. Case v. Beauregard, 101 U. S. 688; Russell v. Clark, 11 U. S. 69.

[59] An action in the nature of a creditor's bill may be brought to enforce the lien of an attachment, and in such case injunction may issue where the debtor's property has been sold fraudulently and there is danger of a renewal from the jurisdiction. People, etc. v. Van Buren, 636 N. Y. 252; Hall v. Stryker, 27 N. Y. 596; Rinchey v. Stryker, 28 N. Y. 45; Frost v. Mott, 34 N. Y. 253; and see M. & L. Bank v. Dakin, 51 N. Y. 519; Williams v. Michenor, 11 N. J. Eq. 520; Hunt v. Field, 9 N. J. Eq. 36; but see Melville v. Brown, 16 N. J. L. 363; Wiggins v. Armstrong, 2 Johns. Ch. 144. Where an attachment is based upon a judgment obtained in another state such attachment will be a proper basis for a creditor's bill. Smith v. Muirheid, 34 N. J. Eq. 4; Francis v. Lawrence, 48 U. S. Eq. 508. An attachment creditor cannot ask the aid of a court of equity to open up a judgment on ordering an issue as to the fairness of it. It must be a judgment creditor. Melville v. Brown, 16 N. J. L. 363. In M. & T. Bank v. Dakin, 51 N. Y. 519, it is said that where it is alleged that the debtor has property in the nature of equitable assets which cannot be reached on execution judgment and execution returned unsatisfied are required for the purpose of showing an exhaustion of legal remedies. But where the property in its nature is liable to seizure and sale on execution but by reason of fraudulent incumbrances the execution cannot be enforced the return of the execution unsatisfied will be dispensed with. In this case a judgment in attachment was obtained execution issued thereon to the sheriff and while it remained in his hands a bill was filed to set aside a fraudulent transfer of a bond and mortgage against which the lien of the attachment was obtained and the action was sustained. The case is not in conflict with Thurber v. Blanck, 50 N. Y. 80. Where attachment has been levied upon land alleged to have been fraudulently conveyed and a suit in equity is brought in aid of the attachment, and it is made to appear that the conveyance was in good faith, the suit must fail. In such case the bill cannot be retained to reach the note and mortgage for the reason that the attachment having failed there is no judgment as a foundation for the suit. Evans v. Virgin, 69

(h) There is another class of cases where resort to equity has been allowed in the first instance without obtaining judgment where the claim of the plaintiff has some equitable element in it, such as a trust or matters of a similar nature.[60]

Wis. 148. Until an attachment creditor obtains judgment he has no standing in a court of equity on a creditor's bill. Clark v. Raymond, 84 Ia. 251. An attachment is not sufficient ground for a creditor's bill and the appointment of a receiver. A judgment must be had. Gwyer v. Figgens, 37 Ia. 517; Gordon v. Worthley, 48 Ia. 429; Pearson v. Maxfield, 51 Ia. 76; Miller v. Dayton, 47 Ia. 312. A judgment on attachment is a foundation for equity interposition to set aside a conveyance as a fraud on creditors. Getzler v. Saroni, 18 Ill. 511; Greenway v. Thomas, 14 Ill. 241. In some jurisdictions it has also been held that an execution is not required where a lien is obtained on the debtor's property by attachment and the object of the suit is to remove a fraudulent conveyance. Francis v. Lawrence, 48 N. J. Eq. 508; Cocks v. Varney, 45 N. J. Eq. 72; Robert v. Hodges, 16 N. J. Eq. 299; Williams v. Michenor, 11 N. J. Eq. 520; Hunt v. Field, 9 N. J. Eq. 36; Dawson v. Sims, 14 Or. 561; Conroy v. Woods, 13 Cal. 626. But the authorities are not uniform on this subject. Anthony v. Wood, 96 N.Y. 181; Castle v. Lewis, 78 N. Y. 131; Mechanics Bk. v. Dakin, 51 N. Y. 519; Thurber v. Blanck, 50 N. Y. 80. The rule of law is that until distributive shares are ascertained they cannot be reached by garnishment. Richardson v. Lester, 83 Ill. 55; Richards v. Griggs, 16 Mo. 416; Norton v. Clark, 18 Nev. 247; Hoyt v. Christie, 51 Vt. 48; Harrington v. La Rocque, 13 Ore. 344; Nerac's Estate, 35 Cal. 392. The question has sometimes arisen as to the right of garnishment against an executor or administrator to reach the distributive share of the devisee to an estate and the rule is generally maintained that until the court has decreed a distribution of the proceeds the right of garnishment does not exist. J. I. Case T. M. Co. v. Miracle, 54 Wis. 295; Hill v. Lacrosse, etc., R. Co., 14 Wis. 291; Brooks v. Cook, 8 Mass. 247; Barnes v. Treat, 7 Mass. 271; Colby v. Coates, 6 Cush. 558; Thayer v. Tyler, 5 Allen 94; Wilder v. Bailey, 3 Mass. 289; Dawson v. Holcomb, 1 Ohio 135; Norton v. Clark, 18 Nev. 247; Millison v. Fisk, 43 Ill. 112; Curling v. Hyde, 10 Mo. 374; Marvin v. Hawley, 9 Mo. 378; Stout v. La Follette, 64 Ind. 365; Post v. Love, 19 Fla. 684; Thorn v. Woodruff, 5 Ark. 55; Welch v. Gurley, 2 Hayw. 334, 510, Battle's Edition; Piper v. Piper, 2 N. H. 439; Young v. Young, 2 Hill (S. C. L.) 425; Winchell v. Allen, 1 Conn. 385; Cutter v. Perkins, 47 Me. 557; Waite v. Osborne, 11 Me. 185; Lyons v. Houston, 2 Harr. (Del.) 349.

[60] In all cases where resort to equity has been allowed without first obtaining judgment, the claim of the plaintiff has had some equitable element in it such as a trust or the like. Detroit Copper & B. R. M. Co. v. Ledwidge, 162 Ill. 305; Dormueil v. Ward, 108 Ill. 216; Gore v. Kramer, 117 Ill. 176. In cases of pure trusts ordinarily there are no legal remedies to exhaust and result may be had to equity in

(i) Another exception to the general rule is where the defendant has left the state and is therefore beyond the reach of process so that judgment cannot be rendered.[61]

Nor is a judgment a prerequisite where it satisfactorily appears that the debtor has absconded or conceals himself so that a judgment cannot be obtained against him by reason of non-service of process.[62]

If it appears that the debtor has left the State after making a conveyance of his property without consideration and for the purpose of defrauding his creditors, the creditor in such case has a right of attachment, and he may obtain thereon a judgment under attachment, which is a judgment *in rem,* and a foundation for the bill.[63]

The same rule applies where the property is not sub-

the first instance. McCartney v. Bostwick, 32 N. Y. 53; Chautauqua Co. Bk. v. White, 2 Geld. 236; Hagan v. Walker, 14 How. 29; Loomis v. Tifft, 16 Barb. 541; Darrington v. Borland, 3 Porter 9, 31; McElwain v. Willis, 9 Wend. 548; Innes v. Lansing, 7 Paige, 586; Bodine v. Edwards, 10 Paige 504; Earl of Chesterfield v. Janssen, 2 Ves. Sr. 125.

[61] Greenway v. Thomas, 14 Ill. 271; Merchants Bk. v. Paine, 13 R. I. 592; Pope v. Solomons, 36 Ga. 541. The doctrine laid down in Greenway v. Thomas, supra, is probably overruled in Ladd v. Judson, 174 Ill. 344, where it is held that the fact that defendants were not residents was not an excuse for not obtaining judgment as attachment was available. Cf. cases referred in following note.

[62] Earl v. Grove, 92 Mich. 285; Peay v. Morrison's Ex'r's, 10 Gratt. 149; Pendleton v. Perkins, 49 Mo. 565; Merchants Nat. Bk. v. Paine, 13 R. I. 592; Farrar v. Haselden, 9 Rich. Eq. 331; Scott v. McMillen, 1 Litt. 302; Peay v. Morrison's Ex'r's, 10 Gratt. 149; Pope v. Solomons, 36 Ga. 541; O'Brien v. Coulter, 2 Blackf. 421; Kipper v. Glancey, 2 Blackf. 356; Anderson v. Bradford, 5 J. J. Marsh. 69; Kipper v. Glancey, 2 Blackf. 356. It is not an exception to the above rule where the debtor has left the county so that process cannot be served upon him, for in such case the creditor may by attachment have a legal remedy. Greenway v. Thomas, 14 Ill. 271; see also Bigelow v. Andress, 31 Ill. 322; Cf. Ladd v. Judson, 174 Ill. 344; Dewey v. Eckert, 62 Ill. 218; Shufeldt v. Boehm, 96 Ill. 560. Where the facts show that no legal remedy exists a judgment is not required. McCartney v. Bostwick, 32 N. Y. 53; Supplee H. Co. v. Driggs, 26 Wash. L. Rep. 658.

[63] Dewey v. Eckert, 62 Ill. 218.

ject to attachment at law, and is an equitable interest only and process cannot be served on the debtor.[64]

(j) Where a creditor is given the power and right to bring suit to set aside a fraudulent conveyance on the ground that the administrator refuses to do so under power given him by the statute it is not necessary that the creditor shall have judgment. And this is for the reason that the creditor acts as a trustee for the administrator.[65]

(k) If a fund is accessible in a court of equity only, of course common law proceedings of any nature would accomplish nothing.[66]

(l) It is not a sufficient excuse for not recovering judgment that the debtor would in the meantime put his property out of his hands.[67]

[64] If the property be not subject to attachment at law, being an equitable interest only, and personal service cannot be had on the debtor so that the creditor is without remedy at law for the establishment of his debt he may in the first instance go into equity, establish his debt and have satisfaction out of the equitable interest. Getzler v. Saroni, 18 Ill. 511; Russell v. Clark, 7 Cranch 69; Ishmael v. Parker, 13 Ill. 324; Farnsworth v. Strasler, 12 Ill. 482; Miller v. Davidson, 3 Gilm. 518; Greenway v. Thomas, 14 Ill. 271.

[65] Where a creditor is given a right to bring suit to set aside a fraudulent conveyance on the ground that the administrator refuses to do so under power given him by the statute it is not essential that the creditor shall have judgment. In such cases he is a trustee for the administrator. Harvey v. McDonald, 113 N. Y. 526; 1 Story Eq. Sec. 243; Dewey v. Moyer, 72 N. Y. 70; Bate v. Graham, 11 N. Y. 237; In re Cornell, 110 N. Y. 351; Ft. Stanwix Bk. v. Leggett, 51 N. Y. 552. A judgment is not required where the duty of bringing suit is charged upon an administrator and he refuses to do so, and the suit is brought by a creditor in behalf of all creditors. Harvey v. McDonnell, 113 N. Y. 526.

[66] If the fund is accessible only to a court of equity application may be made in the first instance to that court, and the establishment in a court of law is not required. Russell v. Clark's Ex'rs, 6 Cranch 69. Again, if land is held by a person as trustee for creditors, and the plaintiff is one of the cestuis que trust and invokes the aid of a court of equity to prevent the trustee from abusing the trust, relief will be granted on the jurisdictional ground residing in courts of equity in such matters. Miller v. Davidson, 3 Gilm. 518; Cf. Jenks v. Horton (Mich.) 4 Det. L. N. 481; Freedman's Sav. & Tr. Co. etc. v. Earle, 110 U. S. 710.

[67] It is not a sufficient excuse that the grantee in a fraudulent conveyance proceeding would in

(m) By analogy the same principle is applied where by statute a judgment and execution returned are required as a condition precedent to the liability of a stockholder in a corporation, and where this condition precedent is rendered impossible without fault of the creditor.[68]

(n) Nor is an execution necessary to be returned *nulla bona* in a proceeding against an insolvent corporation to set aside a fraudulent deed where the corporation is insolvent, and in process of winding up and all of its property is in the hands of a receiver.[69]

(o) Where the proceeding is in equity by reason of an attempt to reach an equitable estate not subject to a common law judgment an execution is not a prerequisite, unless perhaps in a case where such effects are by statute subject to levy.[70]

(p) In many of the States general creditors are given a right of action against the estate of an insolvent debtor, and particularly against insolvent corporations.[71]

the meantime put the property out of his possession and into the hands of an innocent purchaser. Austin v. Bruner, 169 Ill. 178; Dormueil v. Ward, 108 Ill. 216; Shufeldt v. Boehm, 96 Ill. 560. Nor that the debtor has made an assignment and is insolvent. Do.

[68] Shellington v. Howland, 53 N. Y. 371; Kincaid v. Dwinelle, 59 N. Y. 548.

[69] Blair v. Illinois Steel Co., 159 Ill. 350.

[70] Where a proceeding is in equity and it is sought to reach an equitable estate not subject to a common law judgment an execution on a judgment at law, of course, is not a prerequisite. Steere v. Hoagland, 39 Ill. 264; White v. Russell, 79 Ill. 155; Eads v. Mason, 16 Ill. App. 545; Sweny v. Ferguson, 2 Blackf. 129; O'Brien v. Coulter, 2 Blackf. 421; Kipper v. Glancey, 2 Blackf. 356; Doolittle v. Bridgeman, 1 G. Greene 265; Russell v. Clark, 11 U. S. 69 (7 Cranch); Thompson v. Brown, 4 Johns. Ch. 619. If the bill seeks to subject an equitable interest in real estate to the payment of judgment execution is not required. Vanderveer v. Stryker, 8 N. J. Eq. 174.

[71] A general creditor, in a suit under the Illinois corporation act, Sec. 25, may attack fraudulent transfers by the corporation, if the facts are such that a joint decree as to all the defendants, including the corporation, for a conspiracy or common design participated in by all, could be rendered. Cahn v. American Looking Glass Mfg. Co. (Ill. C. C.) 12 Nat. Corp. Rep. 462; First Nat. Bk. v. Peoria Watch Co., 77

§ 168. Execution Must Issue to Proper County. —For the purpose of showing that the legel remedies are exhausted, it is not sufficient to show the issuance of an execution, and a return thereon unsatisfied, but is must be shown to have been issued to the county where the judgment debtor resided at the time the execution was issued, or a sufficient and legal excuse for not doing so shown.[72]

Ill. App. 663; Le Duc v. Brandt, 110 N. C. 289; Greene v. Starnes, 1 Heisk. 582; Freeman v. Pullen, 24 So. 57; Hume v. Condon, 44 W. Va. 553.

[72] Merchants, etc., Bk. v. Griffith, 10 Paige 519. It must appear that the judgment debtor resided in the county at the time when and to which the execution issued. Hope v. Brinkerhoff, 3 Edw. Ch. 445. Thus if it appears that an execution has been issued and returned unsatisfied in the county in which the judgment was rendered, it would be an insufficient foundation for a creditor's bill if the judgment debtor had property in another county at his domicile which might have been reached by an execution to that county. Durand v. Gray, 129 Ill. 9. If plaintiff recovers judgment in one court of record and has execution issued and returned unsatisfied, he is not required to bring another suit in another county where the defendant has property and where he resides, in order to file a bill. Leggett v. Hopkins, 7 Paige 149. If the defendant has removed from the state the execution must issue to the county where his last known place of residence was at, or where he resided when suit was commenced. Reed v. Wheaton, 7 Paige Ch. 663. If the execution may run to any county it need not be docketed in the county to which it is issued. Youngs v. Morrison, 10 Paige Ch. 325. The execution must be issued to the county where the defendant resides if the judgment is in a court where the execution may issue to such county. Child v. Brace, 4 Paige Ch. 309; Reed v. Wheaton, 7 Paige Ch. 663; Merchants, etc., Bk. v. Griffith, 10 Paige Ch. 519. Or there must be averred in the bill a sufficient legal excuse for issuing to another county. When two executions are issued, one to the county where the defendant resides and one to another county, the bill must show a return of both unsatisfied, or a fraudulent obstruction of one shown. Willis v. Moore, Clark's Ch. 150; but see Cuyler v. Moreland, 6 Paige Ch. 273. But where an execution has issued and been returned unsatisfied and an alias has issued but is not returned it will not bar the filing of a bill unless it shall appear that the officer has levied on or can levy on sufficient property to satisfy it. Thomas v. McEwen, 11 Paige Ch. 131. It is sufficient to issue execution to the county where the judgment debtor resides. Shaw v. Dwight, 27 N. Y. 244. An outstanding execution is not required, if one has been returned unsatisfied. Haswell v. Lincks, 87 N. Y. 637; Shaw v. Dwight, 27 N. Y. 244; Fox v. Moyer, 54 N. Y. 125; Crippen v. Hudson, 13 N. Y. 161. Where execution is not issued to the county where the defendant has a fixed place of residence and he has sufficient visible property in that county to satisfy the ex-

Where a judgment has been assigned and the bill is filed by the assignee it is not necessary to aver and prove the issuing of an execution after the assignment.[73]

§ **169. Execution May be Waived by Defendant.** —It is competent for the defendant to waive the issuing of an execution particularly if it appears that there is no property liable to execution.[74]

And waiver may be inferred by the debtor's acquiescence in the proceedings for a considerable length of time without making objection.[75]

§ **170. Exhaustion of Legal Remedy, How Established.** —The jurisdictional element which forms the basis of a creditor's bill is that there has been an entire exhaustion of legal remedies, which is evidenced by return of the execution unsatisfied. The basis of such a return may be that the judgment debtor has fraudulently conveyed his property and thereby placed it beyond the reach of an execution, or it may be from the fact that the property or fund is of such nature and character, or so situated that a levy is impracticable. The general rule is that whenever the nature of the property or thing in action is such, or the same is held in trust for the insolvent judgment debtor that it cannot be reached at law by levy and sale on execution, then the execution must be returned unsatisfied in whole or in part before a bill in equity, or what is generally known as a creditor's bill, can be filed to reach such property.[76]

ecution and which may be reached by it, it will be fatal to the bill and it will not be sustained. Child v. Brace, 4 Paige Ch. 309.

[73] On a bill by an assignee of a judgment it is not necessary to show the issuing of an execution after the assignment. Strange v. Longley, 3 Barb. Ch. 650; Gleason v. Gage, 7 Paige Ch. 121; contra, Wakeman v. Russell, 1 Edw. Ch. 509.

[74] Sage v. Memphis, etc., R. Co., 125 U. S. 361.

[75] Brown v. Lake Superior Iron Co., 134 U. S. 530.

[76] Gilbert v. Stockman, 81 Wis. 602. In such case the equitable lien is created not by the judgment and execution but by the filing of the bill and service of

The return of an execution unsatisfied being a jurisdictional fact must not be regarded as a mere formality. The law requires an honest and diligent effort to satisfy the execution.[77]

And if it appears that the debtor has a place of residence and a business and a large amount of property subject to levy in one county and the execution is issued to another county in which there is no reason to expect to find property, there is no effort in good faith to collect the judgment.[78]

§ 171. A Debtor of Defendant Paying Protected.—A creditor by garnishment, or a creditor's bill, may obtain an equitable lien upon a debt due a nonresident creditor and a compulsory payment of the debt to the creditor obtaining such lien enforced, and in such

process. Dunlevy v. Tallmadge, 32 N. Y. 457. In suits against an association or partnership consisting of several persons, the remedy against their joint property must be exhausted before an action can be brought against one or more of the individuals. Robbins v. Wells, 26 How. (N. Y.) Pr. 15; 18 Abb. Pr. 191. The defendant in a creditor's bill cannot object that plaintiff has not taken the proper steps to enforce his judgment against property which had been sold by the defendant to bona fide purchasers previous to issuing execution. Youngs v. Morrison, 10 Paige 325. A creditor under a bill to reach land conveyed in fraud of the grantor's creditors needs to proceed first at law only far enough to acquire a lien on the land; he need not have taken out execution. Wadsworth v. Schisselbauer, 32 Minn. 84.

[77] A creditor's bill cannot be sustained unless it appears that the creditor has in good faith made an effort to collect his judgment by execution and has fairly exhausted his remedy at law. Northwestern Iron Co. v. Central Tr. Co., 90 Wis. 570.

[78] Northwestern Iron Co. v. Central Tr. Co., 90 Wis. 570; Cf. Re Remington, 7 Wis. 643; Clark v. Bergenthal, 52 Wis. 103; Ahlhauser v. Doud, 74 Wis. 400; Child v. Brace, 4 Paige 309; Dunlevy v. Tallmadge, 32 N. Y. 457; Bassett v. Orr, 7 Biss. 296; Durand v. Gray, 129 Ill. 9. A return to an execution that after diligent search the sheriff could find no property belonging to the defendant whereof to make the whole or any part of the debt, is sufficient evidence of insolvency to entitle the plaintiff to any equitable remedy. Zweig v. Horicon Iron & Mfg. Co., 17 Wis. 362. But in such case if it is shown on the trial that the defendant has in fact sufficient property subject to execution to satisfy the judgment, and that other parties will be injured by granting the relief the court may stay proceedings until an effort has been made to make the judgment on execution. Id.

case the payment will protect the debtor everywhere against a suit to recover the same debt by a creditor.[79]

Where an execution at law fails and a court of equity is called upon to render relief, it has been called, and not inaptly so, an equitable execution.[80]

§ **172. Return of Execution, When Made.**—It has been a matter of much discussion as to when an execution may be returned and be made the basis of a creditor's suit. The authorities upon this subject are so inharmonious and contradictory that it is utterly impossible to reconcile them, or by any systematic analysis reduce them to an orderly arrangement. It has been held that where the issuing of an execution is required as preliminary to the commencement of a creditor's suit the execution must run the full statutory period. The reason urged for this doctrine is that it cannot be certainly known prior to the expiration of that period that the judgment will not be paid, or that property will not be discovered to satisfy the execution, or, in other words, not until then have the legal remedies been fully exhausted, or at least the evidence of that fact is not complete. On the other hand, it has been held that the retention of the execution by the officer for sixty or ninety days, or for the statutory period, where the insolvency of the judgment debtor is made to appear, or when it

[79] Bragg v. Gaynor, 85 Wis. 468; Allen v. Watt, 79 Ill. 284; Bethel v. Chipman, 57 Mich. 379; Newland v. Reilley, 85 Mich. 151; Hannibal, etc., v. Crane, 102 Ill. 249; Morgan v. Neville, 74 Pa. St. 52; Cochran v. Fitch, 1 Sandf. Ch. 142; Williams v. Ingersoll, 89 N. Y. 508; Guillander v. Howell, 35 N. Y. 657. The garnishment or creditor's bill operates as an equitable levy. La Crosse Nat. Bk. v. Wilsons, 74 Wis. 391; Re Milburn, 59 Wis. 24. In order to obtain an equitable lien by creditor's bill an execution must have been issued and returned unsatisfied. Clarkson v. De Peyster, 3 Paige Chy. 320.

[80] An equitable execution is equitable relief which the court gives because an execution at law cannot be had. Atkins v. Shepard, 43 Ch. Div. 131. What is commonly called an equitable execution is not in fact an execution but equitable relief which is granted because there is a hindrance in the way of an execution at law. Id.

would be a useless act, the officer may in good faith after demand return the execution *nulla bona* within the lifetime of the execution and the return thus made become the basis of a creditor's suit. The reason for this doctrine is in the disinclination of equity courts to follow mere formalities, and where it satisfactorily appears that the holding of the execution for the full statutory period would be productive of no good results the formality will be waived and jurisdiction sustained. The advantages of the doctrine first above stated are principally to the debtor in affording him an opportunity to discharge the indebtedness or satisfy the judgment, and thus avoid the train of consequences that sometimes are the inevitable result of a creditor's suit. Besides, the immediate return of an execution, or the perfunctory performance of his duties by the officer under the orders and direction of the plaintiff, or his attorney, is sometimes made use of for unjust and inequitable ends, and particularly so where the judgment debtor is a corporation and there is collusion between the judgment creditor and one or more of the officers and directors of the company, who for improper motives seek to wreck the corporation or injure its financial standing to the detriment of stockholders having no notice of the proceedings, or who may be powerless to protect their interests. On the other hand, the delay occasioned by requiring an execution to run the full statutory period before a bill can be filed may, and frequently does, permit an unprincipled debtor to further cover up, conceal or dispose of his property, so that by the time a court of equity is ready to be of service to the creditor the remedy is inefficient, if not fruitless. Still other patent reasons suggest themselves to all experienced judges and lawyers both for and against each of the views on this subject above noted. A careful examination of the adjudged cases, however, will probably amply demonstrate the

following propositions, as founded on the best reason and result in securing to litigants the fullest measure of equity and justice: (1) Jurisdiction should be entertained at any time after an execution has been returned *nulla bona* if it is made to appear that an honest and *bona fide* effort has been made to realize thereon.

(2) Jurisdiction should not be entertained if it does not satisfactorily appear that the ordinary legal remedies have been exhausted.

(3) Jurisdiction should be refused in all cases where it appears the court by sequestration or a receivership is being made an instrument of unnecessary oppression, on the one side, or unjust favoritism on the other.

(a) If the sheriff takes the responsibility of returning the execution within the time it has to run, after having made a demand for property, he may do so, and the return of *nulla bona* will be *prima facie* evidence that the creditor has exhausted his legal remedies and chancery jurisdiction will be sustained.[1]

(b) It is the duty of the officer to hold an execution during its life, but he may take the responsibility of making an earlier return thereof where he has made a demand for property, and is unable to find anything to seize and satisfy the execution.[2]

[1] Bowen v. Parkhurst, 24 Ill. 257. This case was subsequently affirmed in Williams v. Ives, 49 Ill. 512; First Nat. Bk. v. Gage, 79 Ill. 207. The responsibility of making a return on the execution of the sheriff is upon the officer and if he makes a demand and no property is found upon his own responsibility it is sufficient. Thompson v. Marsh, 61 Ill. App. 269; Cf. Forbes v. Waller, 25 N. Y. 430; Renaud v. O'Brien, 35 N. Y. 99.

[2] Stirlen v. Jewett, 165 Ill. 410; Bowen v. Parkhurst, 24 Ill. 257; First Nat. Bk. v. Gage, 79 Ill. 207. The bill cannot be filed until after the return day of the execution though the execution may have been actually returned before that. Cassidy v. Meacham, 3 Paige Ch. 311; Hadden v. Spader, 20 Johns. 554. It is no objection that an execution was returned on the return day if the bill is not filed until after that day. Williams v. Hogeboom, 8 Paige Ch. 469. The return of an execution unsatisfied in whole or in part is a sufficient foundation for a bill in chancery to discover property and subject the same to the

(c) But such a return if made by order of the plaintiff's attorney does not establish a presumption, nor does it where the return itself does not show an inability on the part of the officer to find property.[3]

(d) A proper return is just as much a jurisdictional prerequisite as the issuance. It must show that the officer has been unable to find property liable to be taken on execution.

payment of the judgment on which the execution is issued. Alexander v. Tams, 13 Ill. 221; Bowen v. Parkhurst, 24 Ill. 257; Mitchell v. Byrnes, 67 Ill. 522; Heacock v. Durand, 42 Ill. 230. It is a prerequisite to a filing of a creditor's bill, the plaintiff must have an execution issued to the sheriff of the county where the debtor resides and carries on business, or where he did reside when the suit was brought, and if the plaintiff knows the defendant has property in a particular county, he should send an execution to that county. Durand v. Gray, 129 Ill. 9; Child v. Brace, 4 Paige 309; Reed v. Wheaton, 7 Paige 663. If an execution is not sent to the county where the defendant resides at the time the execution is issued, plaintiff must by averment, show sufficient and legal excuse for not doing so. Id. Merchants' Bank v. Griffith, 10 Paige 519; Wheeler v. Heermans, 3 Sandf. Ch. 597; Smith v. Fitch, Clark's Ch. 265. The statute permitting a debtor to schedule property within ten days after demand, does not operate to make a return within the ten days invalid or insufficient to support a creditor's bill. Howe v. Babcock, 72 Ill. App. 68. If the statute requires the issuing of an execution upon a judgment within a given time from the date of rendition in order to preserve the lien of the judgment, as in Illinois, and the creditor's proceeding is based on the lien, in such case the issuance of the execution within such period is a prerequisite to the filing of a bill to set aside a fraudulent conveyance, and subject the property to the payment of the judgment. Weis v. Tiernan, 91 Ill. 27; Newman v. Willetts, 52 Ill. 98.

[3] Michigan C. R. Co. v. Keohane, 31 Ill. 144; Hartley v. Atkins, 64 Ill. App. 502. When an execution is returned before the day which limits its life, it must show either by clear inference, or upon its face, that it is the officer's own act, so that a foundation may be laid for the prosecution of equitable remedies based upon an exhaustion of all legal remedies. Pecos Irrigation & Improvement Co. v. Olson, 63 Ill. App. 313. When a return is made upon the responsibility of the sheriff it is presumed he has performed what is required of him by the statute as a preliminary to making a return before the expiration of the execution unless there is proof or clear implication to the contrary. Pecos Irrigation & Improvement Co. v. Olson, supra. The legal presumption that an officer has made diligent effort to obtain satisfaction of his execution and has been unable to do so, as shown by his return, may be theoretically true, but is often found to be the merest fiction. It appears, however, that the order of plaintiff's attorney to return the execution will not make the return

The return must be to the county from which the execution was issued.[4] And there must be an honest and *bona fide* attempt to make the money on the execution, and this must extend to all defendants against whom judgment is rendered.[5]

(e) And the return be made before the bill is filed.[6]

(f) But an irregular return is subject to amendment, and the proceedings may be stayed a reasonable time so that the proper court may authorize the correction.[7]

insufficient as a foundation for a creditor's bill where it also appears that the execution had been in the hands of the sheriff for eleven days, that he had demanded property of the defendant and was not able to find any property upon which to levy the execution. Huntington v. Metzger, 158 Ill. 272. A demand was held not to be necessary in Thompson v. Marsh, 61 Ill. App. 269. And if the execution is returned unsatisfied before this is done at the direction of the plaintiff's attorney indorsed on the execution, it has been held that the legal remedies of the plaintiff are not then shown to be exhausted. The execution must be returned unsatisfied because of an inability to find property whereon to levy. Scheubert v. Honel, 152 Ill. 313. Where a sheriff has taken all proper steps to collect an execution, has made demand without result, and has been unable to find property to levy on he may take the responsibility of returning the execution before the expiration of 90 days, and the fact that he has been requested by the attorney of the creditor to make the return when such condition exists is immaterial. Howe v. Babcock, 72 Ill. App. 68. Return may be by order of plaintiff's attorney if there was no collusion. Forbes v. Waller, 25 N. Y. 430. Where the return of the sheriff is "returned with schedule" the court cannot say the defendant might have had property. If anything is implied it is that the defendant had only exempt property. Thompson v. Yates, 61 Ill. App. 262.

[4] The return of an execution must be made to the county from which it issued and not to the county where docketed. Winslow v. Pitkin, 1 Barb. Ch. 402.

[5] Plaintiff must make a bona fide attempt to collect his execution and must exhaust his legal remedy against all defendants against whom judgment is rendered. Child v. Brace, 4 Paige Ch. 309; Howard v. Sheldon, 11 Paige Ch. 558.

[6] Hazen v. Durling, 2 N. J. Eq. 133. If the bill shows the return and filing of the execution to have been subsequent to the commencement of the suit this bill will be dismissed at the hearing, though the objection is not taken in the answer. Pardee v. De Cala, 7 Paige Ch. 132. The execution returned before the return day is not a foundation for a creditor's bill. Platt v. Cadwell, 9 Paige Ch. 386; Cassidy v. Meacham, 3 Paige Ch. 311.

[7] If the return of the execution is improper or irregular the court will stay the proceedings upon the bill a reasonable time so that the return may be rectified in the proper court, if there is a reasonable probability that it will be corrected. Platt v. Cadwell, 9 Paige Ch. 386.

(g) While the return of an officer imparts verity, yet there must be no collusion or fraud between the plaintiff and the officer.[8]

(h) There can be no uniform rule as to the formal parts of the return.[9]

(i) Allegations of the bill that are defective as to the execution and return may be cured by the evidence on the hearing.[10]

(j) A return admitted by the defendant as *prima facie* must be overcome by him.[11]

§ 173. Judgment Need Not be Such That Immediate Levy Could be Made.—While the general rule is that a judgment is necessary, yet it has been held that the judgment need not be such as could be imme-

[8] If there is no fraud or collusion between the plaintiff and the officer a return of an execution unsatisfied will be a sufficient foundation for a creditor's bill even if the officer was informed that the defendant had some interest in property that might be sold. Stoors v. Kelsey, 2 Paige Ch. 418. Even a false return by the officer of no property found is not fatal to the creditor's bill in the absence of proof of collusion between the officer and the plaintiff's attorney. Rawdon v. Benedict, 1 Ch. Sent. 48.

[9] The following returns have been held to be substantially good. A return on an execution that the defendants had no goods or chattels, lands or tenements, where but one defendant was served is a sufficient return to sustain a creditor's bill and the appointment of a receiver for the joint property and the separate property of the defendant served. Austin v. Figueira, 7 Paige Ch. 56. A return upon an execution "I return this the execution unsatisfied; found no goods and chattels on which to levy" is a sufficient return for a creditor's bill. Newman v. Van Duyne, 42 N. J. Eq. 485; Poineer v. Bagnall, 49 N. J. L. 226. The return of an execution that the defendants are not either in their partnership name or as individuals seized or possessed of any estate, real or personal, which could be seized or taken by virtue of the execution is prima facie a foundation for a creditor's bill. Randolph v. Daly, 16 N. J. Eq. 313.

[10] Where a bill alleged that an execution had been issued on a judgment and delivered to the sheriff of the county to be executed but did not allege what had been done under it, and did not allege that the debtor had no property from which the judgment could be made, but it did appear, on the hearing, that at that time, as well as at the time of the issuing of the execution, the debtor had no property whatever liable to execution, it was held to be sufficient and the bill was sustained. Thorp v. Leibrecht, 56 N. J. Eq. 499, and see Dunham v. Cox, 2 Stock. 437.

[11] Turley v. Taylor, 3 Lea. 171.

diately enforced, as where the judgment should be revived by a *scire facias*. Where the proceeding is against an administrator of a deceased debtor and the grantee of such debtor, and is based on a conveyance alleged to be in fraud of creditors, the court does not exercise an auxiliary jurisdiction to aid legal process, and consequently it is not necessary that the creditor should be in a condition to levy an execution.[12]

§ **174. Judgment Upon a Judgment—Effect of.**—Where the original judgment is still in force it is immaterial that a new judgment has since been obtained on the original judgment. Courts of law consider the original judgment in full force until sufficient property has been levied on or money raised to satisfy the same, and the same rules apply in equity in that regard.[13]

A judgment against a debtor upon which a judgment is rendered in another State is not merged into the latter judgment so as to prevent the maintenance of an action on such former judgment in the State in which it is rendered for the purpose of attacking a fraudulent conveyance.[14]

§ **175. Valid Judgment by Confession Sufficient.**—A judgment by confession if valid between the parties is a sufficient foundation for a creditor's bill or a bill in the nature of a creditor's bill to set aside a fraudulent transfer. Where persons have obtained possession of the debtor's property by a fraudulent and void conveyance they cannot be allowed to hold it against a judgment which is valid against the debtor, and fair in its

[12] Where a creditor's bill is based upon a judgment to reach property fraudulently conveyed by a deceased debtor and the bill is against the administrator and the person to whom the property was conveyed, it is not necessary that the creditors should be in a condition to levy an execution if the fraudulent transfer should be removed as where the judgment should be revived by scire facias. Hagan v. Walker, 55 U. S. 29.

[13] Bates v. Lyons, 7 Paige 85.

[14] Wells v. Schuster-Hax Nat. Bank, 23 Colo. 534.

consideration, though there may have been irregularity in its rendition.[15]

§ **176. Judgment, When Conclusive.**—Where a creditor's suit is based upon a judgment the validity of the indebtedness upon which the judgment was based cannot be inquired into where the purpose of the suit is to set aside an alleged fraudulent conveyance. The judgment is *prima facie* as to a grantee of the debtor, and is conclusive against stockholders under a bill filed by creditors.[16]

Ordinarily the judgment on which the plaintiff's bill is filed is conclusive, but if there is doubt whether the bill is filed in good faith, or there is appearance of collusion between the plaintiff and the debtor, the court may properly go behind the judgment in determining

[15] Neusbaum v. Keim, 24 N. Y. 325.

[16] Shaw v. Manchester, 84 Ia. 246; Conover v. Jeffrey, 26 N. J. Eq. 36; Faber v. Matz, 86 Wis. 370; Carpenter v. Osborn, 102 N. Y. 552; Decker v. Decker, 108 N. Y. 128; Thornton v. Marginal Pt. R. Co., 123 Mass. 32. The judgment on which a creditor's bill is based, is prima facie evidence only, of the validity of the debt, as against a grantee. Clark v. Anthony, 31 Ark. 546. A judgment upon which a creditor's bill is filed is conclusive as to the parties to it and cannot be impeached collaterally nor questioned upon a creditor's bill. Mattingly v. Nye, 75 U. S. 370. Under a bill filed by a judgment creditor, against stockholders, it is not competent for the defendants who are simply called upon to pay what they owe the corporation, in order that its obligations may be discharged, to reopen the question whether, upon the facts, the plaintiff ought to have had judgment against the corporation. The judgment was conclusive upon that fact, against the corporation, and all persons in privity with it, and carries with it, without litigation, the facts upon which it is based. Baines v. Babcock, 95 Cal. 581; Marsh v. Burroughs, 1 Woods, 463. Where it is alleged that the indebtedness represented by certain judgments was not legally and justly owing at the time from the debtor and that there was fraud in their recovery no rule is better settled than that the debtor in such case is precluded from setting up the fraud. He is a party to it. Colburn v. Shay, 17 Ill. App. 289; Harmon v. Harmon, 63 Ill. 512; Ward v. Enders, 29 Ill. 519; Horner v. Zimmerman, 45 Ill. 14; Choteau v. Jones, 11 Ill. 300; Lyon v. Robbins, 46 Ill. 276; Upton v. Craig, 57 Ill. 257; Fitzgerald v. Forristal, 48 Ill. 228; Beebe v. Saulter, 87 Ill. 518; Campbell v. Whitson, 68 Ill. 240; White v. Russell, 79 Ill. 155; Rappleye v. International Bk., 93 Ill. 396. A judgment in full force rendered by a court of competent jurisdiction, where no fraud is alleged, must have full force until re-

the question of relief. And so, also, in regard to the regularity of the execution issued on the judgment.[17]

Where a suit is instituted by creditors against stockholders of a corporation based upon a judgment against the company the defendants are not permitted to question the original cause of action unless they can show collusion between the plaintiff and the defendant corporation entered into for the purpose of defrauding the stockholders.[18]

The reason for not permitting a defendant in a creditor's suit to question the character of the consideration of the judgment is to be found in the doctrine of *res adjudicata,* and it seems that estoppel does not depend upon the defense having been actually interposed, but it is sufficient if it might have been interposed.[19]

versed. It cannot be attacked in a court of chancery on a creditor's bill filed. Bay v. Cook, 31 Ill. 336. Under a creditor's bill the judgment on which it is founded cannot be attacked on the ground that there was no binding obligation at the time of the judgment. Sanderson v. Snow, 68 Ill. App. 384. Though the plaintiff in a creditor's bill has a judgment against the debtor in another suit, it does not conclusively show the existence of a present debt to which there are no defenses. First Nat. Bank v. Randall, 38 Atl. 1055.

[17] Williams v. Hubbard, 1 Mich. 446. Mr. Justice Field in Jones v. Green, 1 Wall. 330, says: "The court when its aid is invoked looks only to the execution and the return of the officer to whom the execution was directed. The execution shows the remedy afforded at law has been pursued and of course is the highest evidence of the fact. The return shows whether the remedy has proved effectual or not, and from the embarrassments which would attend any other rule the return is held conclusive. The court will not entertain inquiries as to diligence of the officer in endeavoring to find property upon which to levy."

[18] Marsh v. Burroughs, 1 Woods 463; Glenn v. Williams, 60 Md. 93; Henry v. Elder, 63 Ga. 347; Lehman v. Glenn, 87 Ala. 618; Stephens v. Fox, 83 N. Y. 313; Merchants' Bank v. Chandler, 19 Wis. 434. In a suit in equity by a judgment creditor to reach lands held by a third party in fraud for the debtor it is not competent for the defendant's trustees to question the judgment on any ground except it was recovered by fraudulent collusion between the plaintiff and the defendant therein. McCanless v. Smith, 51 N. J. Eq. 505. A court in which a creditor's bill is filed will not enquire into the regularity of the judgment and execution of a co-ordinate court which is made the foundation of the proceedings. Platt v. Cadwell, 9 Paige Ch. 386; and see also Baines v. Babcock, 95 Cal. 581.

[19] McCanless v. Smith, 51 N. J.

Of course in a case where there was fraud and collusion in the procurement of the judgment it would not be conclusive. Fraud and collusion may vitiate a judgment as well as a deed or contract.[20]

§ 177. Judgment is Not Conclusive as to Other Creditors.—While the judgment debtor and those in privity with him are not permitted to question the judgment upon which the bill is filed, the rule does not prevent a judgment creditor from questioning the validity of an antecedent judgment creditor's judgment, but not for mere irregularity in the rendition.[21]

Eq. 505. And see also Spencer v. Brockway, 1 Ohio 122; Thatcher v. Gammon, 12 Mass. 268; Healy v. Root, 11 Pick. 390; Christmas v. Russell, 5 Wall. 290; Mattingly v. Nye, 75 U. S. 370; Candee v. Lord, 2 N. Y. 269; Burgess v. Simonson, 45 N. Y. 225; Carpenter v. Osborn, 102 N. Y. 552.

[20] McCanless v. Smith, 51 N. J. Eq. 505. But when judgment is entered for a debt justly due and owing the fact that it was entered upon an offer to allow it, does not render it collusive in any sense which allows another creditor to interfere. Columbus Watch Co. v. Hodenpyl, 135 N. Y. 430; Sweetser v. Silber, 87 Wis. 102.

[21] Edgar v. Clevenger, 2 N. J. Eq. 258. A judgment cannot be set aside at the suit of another creditor for mere irregularity, if the judgment is for a claim that is honest and the proceedings are bona fide. Trier v. Herman, 115 N. Y. 163. A creditor whose claim is unsecured by mortgage or privilege has no right to compel another creditor who has a judicial mortgage as well as the privilege of seizing creditor, to bring the proceeds of sale into the court for a ratable distribution in concursu under the La. Code Prac., Art. 301. Thompson v. Daniel, 47 La. Ann. 1401. There must be an actual and bona fide indebtedness, which is the foundation of a judgment as to other creditors. Sprague v. Noble, 3 Ill. App. 521. A judgment will not be set aside on the petition of a judgment creditor unless it is shown to be unjust or inequitable. Farwell v. Hilbert, 91 Wis. 437; Marshall v. Milwaukee W. M., 84 Wis. 23; Horning v. E. Griesbach Brew. Co., 84 Wis. 71; F. Mayer B. & S. Co. v. Falk, 89 Wis. 216. If there are several bills which have not been consolidated, seeking assets that have been transferred by a debtor in favor of the creditors, the complainant in one of such bills in order to assail the decree in the other case must file an original bill. Jones v. Davenport, 45 N. J. Eq. 77. Judgment creditors are in no better position to attack a judgment on the ground of irregularity than the debtor himself. Neither of these can avoid a judgment for irregularity except it is unjust and inequitable, though it would be otherwise as to fraud of the parties thereto. Marshall v. Milwaukee, etc., Mills, 84 Wis. 23; Cf. Brown v. Parker, 28 Wis. 21; Bonnell v. Gray, 36 Wis. 574; McCabe v. Sumner, 40 Wis. 386; Pirie v. Hughes, 43 Wis. 531; Rogers v.

Where it is sought by one creditor to attack the validity of judgments, executions, and levies against the property of the debtor on the ground of collusion and fraud, it is essential that the attacking party shall be a judgment creditor.[22]

This right does not extend to a general creditor having no judgment.[23]

§ **178. Judgment in Federal Court Basis for Bill in State Court.**—The better doctrine and one supported by reason and the trend of modern judicial decisions is that a judgment of a United States court may properly be made the basis of a suit in equity in a State court to attack and set aside a fraudulent conveyance.[24] And so a judgment in the State court is a good foundation for a creditor's bill in the Federal court.[25]

Cherrier, 75 Wis. 54; Compare, Sloane v. Anderson, 57 Wis. 123; Reid v. Southworth, 71 Wis. 288.

[22] Mere creditors at large are not in a position to attack the validity of judgments, executions and levies against the debtor on the ground of collusion and fraud. Weber v. Weber, 90 Wis. 467; Gregory v. Rosenkrans, 78 Wis. 451; Ullman v. Duncan, 78 Wis. 213; Manson v. Phoenix Ins. Co. 64 Wis. 26. They must have exhausted their legal remedies or acquired some right or lien at law. Nassauer v. Techner, 65 Wis. 388; Meissner v. Meissner, 68 Wis., 336; Ahlhauser v. Doud, 74 Wis. 400; Gilbert v. Stockman, 81 Wis. 602; North Hudson B. & L. Asso. v. Childs, 86 Wis. 292.

[23] Frothingham v. Hodenpyl, 135 N. Y. 630; Wiggins v. Armstrong, 2 Johns. Ch. 144; Dunlevy v. Tallmadge, 32 N. Y. 457.

[24] A judgment of a United States court is so far a domestic judgment that a state court of equity will lend its aid to set aside a fraudulent conveyance in order that the land may be subjected to execution. Bullitt v. Taylor, 34 Miss. 708; Vanderveer v. Stryker, 8 N. J. Eq. 175; Ballin v. Loeb, 78 Wis. 404; Chicago & A. B. Co. v. Fowler, 55 Kan. 17. The statement of the text is at variance with the decisions in Steere v. Hoagland, 39 Ill. 264; Winslow v. Leland, 128 Ill. 304, and Dillworth v. Curts, 139 Ill. 508, and yet the same court has held that where the amount confers jurisdiction the judgment of a justice of the peace is sufficient. If the doctrine of the above cases should be carried to their logical results a strange anomaly would present itself if after the plaintiff had recovered a judgment in the United States court he should become a resident of the same state with the defendant and should desire to enforce his judgment by instituting a creditor's proceeding.

[25] First Nat. Bank v. Steinway (C. C. W. D. Pa.) 77 Fed. Rep. 661. A creditor's bill cannot be based on a judgment before a justice of the peace. Crippen v. Hudson, 13 N. Y. 161. The judgment must be docketed in the

It has also been held that a plaintiff by judgment obtained against a corporation in a United States court is entitled to pursue a remedy given to him by the statutes of the State in which such a court is situated, by which the property of the corporation may be sequestrated and equally distributed among creditors, to the same extent and in the same manner as if his judgment was obtained in the State court. This doctrine is based upon the idea that United States courts are not foreign within the State in which they are held, and the State court will treat them as domestic.[26]

It is not necessary that the judgment on which the proceedings are based should have been rendered by the same court if the court in which it was rendered was of competent jurisdiction.[27]

But suit cannot be brought against a surety in one United States Circuit Court to set aside a fraudulent conveyance of the surety based on a judgment rendered in another circuit against the principal.[28]

A judgment before a Justice of the Peace has been held not sufficient foundation for a creditor's bill.[29]

§ 179. Judgment Need Not Antedate Act Complained of.—Where the bill is based on a fraudulent

proper clerk's office and execution issued and returned as to real estate. Id.

[26] Ballin v. Loeb, 78 Wis. 404; Turrell v. Warren, 25 Minn. 9; Wandling v. Straw, 25 W. Va. 692; Thomson v. Lee Co., 22 Ia. 206; St. Albans v. Bush, 4 Vt. 58; Barney v. Patterson, 6 Harr. & T. 182; Embry v. Palmer, 107 U. S. 3; McCauley v. Hargroves, 48 Ga. 50; Williams v. Wilkes, 14 Pa. St. 228.

[27] Faber v. Matz, 86 Wis. 370.

[28] United States v. Ingate, 48 Fed. Rep. 251. A judgment of the U. S. circuit court of one district is not sufficient as a basis for a creditor's bill in a circuit court of another district. Union Trust Co. v. Boker, 89 Fed. Rep. 6; but see Merchants' Nat. Bk. v. Chattanooga C. Co., 53 Fed. Rep. 314. Nor is a foreign judgment or decree. Ladd v. Judson, 174 Ill. 344. In Merchants' Nat. Bk. v. Chattanooga C. Co., supra, it was held that a judgment in Georgia was a sufficient foundation for a creditor's bill in Tennessee based upon the following cases: Stutz v. Handley, 41 Fed. Rep. 531; S. C. 139 U. S. 419; Hatch v. Dana, 101 U. S. 205.

[29] Crippin v. Hudson, 13 N. Y. 161.

transfer of property it is not essential that the judgment shall have been rendered prior to the transfer, which is alleged to be fraudulent.[30]

§ **180. Claim Against Estate as Basis Must be Exhibited, Etc.**—A creditor's bill against a decedent's estate will not be entertained until the claimant exhibits his claim and has it allowed in the Probate Court.[31]

§ **181. Creditor's Bill by Wife Against Husband.**—A creditor's bill will not be sustained by a wife against her husband to reach and apply property which cannot be taken on execution or attachment, until it shall be established in a court of competent jurisdiction that she is a creditor of her husband in an appropriate proceeding.[32]

§ **182. Judgment Necessary Though Actual Fraud Charged.**—A creditor who has not reduced his claim for goods sold to judgment, but has merely obtained an attachment subject to executions of judgment creditors, cannot maintain a bill to discover outstanding debts due the debtor, although he alleges fraud and is

[30] Piersloff v. Jorges, 86 Wis. 128; Jones v. Jones, 64 Wis. 301.

[31] Goodman v. Kopperl, 67 Ill. App. 42; Harris v. Douglas, 64 Ill., 466; Armstrong v. Cooper, 11 Ill. 560; Freeland v. Dazey, 25 Ill. 294; Heustis v. Johnson, 84 Ill. 61; Crain v. Kennedy, 85 Ill. 340; Duval v. Duval, 153 Ill. 49; Hills v. Sherwood, 48 Cal. 386. This, however, is not an unbending rule. A creditor whose claim has been duly allowed by the county court against an estate, has no such interest in the real estate of the deceased as will authorize him to file a bill in equity to perfect the title or remove incumbrances. Le Moyne v. Quimby, 70 Ill. 399. Cf. McDowell v. Cochran, 11 Ill. 31; Choteau v. Jones, 11 Ill. 300. The judgment of the county court in allowing a claim of a creditor is only prima facie evidence and may be contested in a suit against an heir to set aside a conveyance to him based on such judgment even if the conveyance is colorable only. Gibson v. Gibson, 82 Ill. 61. In New Jersey it has been held that where the creditor has a lien given to him by statute upon the decedent's estate, an allegation in the bill that the claim has been presented to the administrator, is unnecessary where the allegations of the bill admitted on demurrer show the complainant to be a creditor. Mayor, etc., v. Alyea, 53 N. J. Eq. 580; Merchants, etc., v. Borland, 53 N. J. Eq. 282.

[32] Willard v. Briggs, 161 Mass. 58.

unable to discover the names and addresses of the debtor's creditors. A bill in equity will not lie for the purpose of procuring relief against fraud at the suit of a creditor who has never reduced his demand to a judgment. Unless the creditor has obtained a judgment so as to have a certain claim upon the property of the debtor, he has no concern with his frauds.[33]

§ **183. Allegation as to Date of Judgment, Amendment, Etc.**—It is not a defense to a creditor's bill based upon a judgment, that the judgment was entered upon a later date than that stated in the bill of complaint, if it appears that the later judgment entry was merely to correct the one relied on.[34]

§ **184. Judgment Based on Tort Sufficient.**—Where the complainant's cause of action is based upon a tort and the right of action accrues and becomes vested before a voluntary conveyance is made, the plaintiff is

[33] Detroit C. & R. R. M. Co. v. Ledwidge, 162 Ill. 305; Shufeldt v. Boehm, 96 Ill. 560; Dewey v. Eckert, 62 Ill. 218; so in Greenway v. Thomas, 14 Ill. 271, a creditor filed a bill to set aside a fraudulent assignment alleged to have been made by his debtor, alleging that said debtor had left the country so that process could not be served upon him and that the complainant had served out an attachment and placed it in the hands of the sheriff, it was held that the demurrer to the bill was properly sustained and the bill dismissed on the ground that there was a remedy at law because the attachment could have been prosecuted to judgment, or the complainant could have garnisheed the debtors of the assignors. In Bigelow v. Andress, 31 Ill. 322, a bill was filed alleging an indebtedness to plaintiff for goods sold; that an attachment had been issued and served upon one Earl as garnishee; that the debtor had left for parts unknown after making a fraudulent sale to his father; that Earl was disposing of the goods of the debtor as his agent. Held that there was no lien acquired upon the debtor's property in the hands of the garnishee which would authorize a court of equity to interfere on the ground that there was an adequate remedy at law. And it is for the reason that a court of chancery does not assume jurisdiction to settle and establish purely legal rights. In Gore v. Kramer, 117 Ill. 176, 182, the primary object of the bill was to recover a debt first cancelling the contract of sale for fraud and then obtaining a decree for the value of the goods, it was held that the plaintiff not having exhausted his legal remedies had no standing in a court of equity. That fraud in the purchase of the goods did not form a basis for equitable jurisdiction.

[34] First Nat. Bk. of Marshall v. Hosmer, 48 Mich. 200.

entitled to attack the conveyance as fraudulent though judgment was not rendered until after the conveyance. While, strictly speaking, the relation of debtor and creditor in such case does not exist until judgment, yet the relationship of the parties is such that a creditor's bill may be sustained.[35]

§ **185. Order of Proceeding as Between Joint Tenants and Surety.**—In a proceeding by creditors to reach property which has been owned by a husband and his wife as tenants in common and conveyed by them in trust to secure a note of the husband on which a third party is surety, the creditors may first proceed against the interest of the husband, then of the wife, and then against the surety.[36]

§ **186. Agreement to Pay Debts Secured by Threats Not Enforcible.**—An agreement to pay the debts of another induced by threats and undue influence cannot be enforced in equity by a creditor. Where the suit in equity is based upon such an agreement the defense of undue influence, etc., is available, and this though a payment may have been made on the indebtedness, if made under threats of suit and in ignorance of rights of the defendant; nor is forbearance to sue by reason of the agreement a defense.[37]

§ **187. One Creditor May Attack Another, When.**—Where a fund is insufficient to pay in full all judgment creditors one of them may attack the validity of

[35] Thorp v. Liebrecht, 56 N. J. Eq. 499; Petree v. Brotherton, 133 Ind 692; Boid v. Dean, 3 Dick. Ch. 193. In this case it was held that a transfer could not be made with a view of being able to slander another with impunity. Cf. The American Casualty Ins. Co.'s Case, 82 Md. 535. The English authorities are in harmony with the text. Barling v. Bishop, 29 Beav. 417; 6 Jur. (N. S.) 812; Crossley v. Elworthy, L. R. 12 Eq. Cas. 158; 40 L. J. Ch. 480. The proceeding may be based on a judgment in a bastardy proceeding. Pierstoff v. Jorges, 86 Wis. 128.

[36] Rogan v. Williams, 63 Tex. 123.

[37] Rau v. Von Zedlitz, 132 Mass. 164.

other judgment creditors who are endeavoring to share in such fund.[38]

[38] One judgment creditor may attack the validity of the judgment of another creditor, where the funds are not sufficient to pay both. Cavaroc v. Fournet, 28 La. Ann. 587. But a general creditor cannot do so. Bownes v. Weld, 3 Daly 253. A chattel mortgage cannot be questioned by a creditor who during the time it was not on file was only a general creditor and had no process for the collection or enforcement of his debt. Bullard v. Kenyon, 49 N. Y. S. R. 132, 21 N. Y. Supp. 32. General creditors of an insolvent attachment debtor cannot maintain a bill to have declared void a sale of attached property as perishable, under Ala. Code, Sec. 2958. McCreery v. Berney (Ala.) Nat. Bank, 22 So. 577. A defendant in a suit to ascertain the property of the debtor and the liens and priorities against the same may file an answer in the nature of a cross-bill attacking any of the liens involved therein as fraudulent preferences under the West Virginia statute. Casto v. Greer, 44 W. Va, 332.

CHAPTER VI.

SUPPLEMENTARY PROCEEDINGS.

§ 200. General—Proceedings not uniform.
201. Are statutory in lieu of creditors' bills.
202. Common law remedies to be first exhausted.
203. Return of execution before return day.
204. Same—Contrary doctrine.
205. Examination of debtor—Discovery.
(a) Examination of debtor when execution outstanding.
(b) Examination of debtor's wife.
206. Examination—Scope of—Discretionary.
(a) Examination—Power of court commissioner.
(b) Examination must be in reasonable time.
207. Power of court to enjoin transfers.
208. Husband not a competent witness, when.
209. Receiver in.
210. Power of receiver.
211. Proceedings are ancillary.

NOTE:—No effort has been made to include in this chapter all the subjects that have been passed upon, or all the cases that have arisen under supplementary proceedings, so-called, for the reason that generally the subjects and the cases are not distinguishable from those applicable to the general subject of creditors' bills.

Section **200. General—Proceedings Not Uniform.**—Supplementary Proceedings, or proceedings in aid, are actions authorized by statute and are designed to take the place of creditors' bills in chancery, the object sought in each being the same. The general scope of statutory proceedings of this nature is the same in all the States where the code procedure has been adopted, and yet there is sufficient dissimilarity in the provisions of the statutes, and the practice thereunder, as to render many of the decisions of little general value. Not only this, but the decisions in the same State are often misleading without a careful and discriminating ex-

amination of the frequent revisions and modifications of the statutes. Radical legislative changes in court procedure most usually result in confusion and are frequently more injurious than the evils they are designed to remedy. But the ultra conservatism of courts in regard to what has the appearance of judicial legislation and their persistent enforcement of the principle of *stare decisis*, an inheritance of an unprogressive bygone age, are largely responsible for many of the sweeping legislative changes so instrumental in unsettling the practice, frequently, for a generation. Courts should have no hesitancy in applying both new and old principles of law to new conditions and shaping the law to meet the exigencies of the times and no valid reason exists why they may not, when a mode of practice has become detrimental to public interests, change the practice to correspond with general public sentiment.[1]

[1] When the established law of England concerning personal property was recognized as detrimental to the commercial interests of that country its courts changed the jurisprudence of that country to meet the public interests and established the law in harmony with the other countries of Continental Europe. Our own supreme court, however, in the case of Booth v. Clark, 58 U. S. 322, adopted the law of England as it existed prior to 1789, and has since, so far as that court is concerned, stood by that decision on the principle of stare decisis, though most of the state courts have refused to follow it, and some of the states, particularly New York, have, by statute, repudiated the doctrine there announced. Upon this question Lord Cottingham said that it was the duty of courts of equity to adapt their practice and course of proceeding, as far as possible, to the existing state of society and apply their jurisdiction to those new cases which from the progress daily made in the affairs of men must continually arise and not from a too strict adherence to forms and rules established under very different circumstances decline to administer justice and to enforce rights for which there is no remedy. Taylor v. Salmon, 4 Myl. & Cr. 134, 619, 635; Mare v. Malachy, 1 Myl. & Cr. 559. More than two hundred years ago the doctrine was established in England that the admiralty jurisdiction was limited to the ebb and flow of the tide, and that doctrine was adopted and followed in the United States until 1851, when it was deliberately abandoned by the Supreme Court of the United States, and it was then held that the admiralty and maritime jurisdiction granted to the federal government was not limited to

§ **201. Are Statutory in Lieu of Creditors' Bills.** — Supplementary proceedings are proceedings authorized by statute in many of the States and are intended to accomplish the same purpose as the creditor's bill under the chancery practice as it formerly existed. The proceeding is less formal and is simplified and, as indicated by the title, is a proceeding supplemental to and in aid of the suit in which the judgment against the debtor is rendered. As a general rule, in this class of cases, on proper application, the debtor is examined under oath, touching his property and any disposition or concealment thereof, and on the discovery of property which ought to be applied in satisfaction of the debt all necessary orders and decrees may be entered to accomplish such purpose. For the purpose of reaching property that has been fraudulently conveyed by the debtor, a receiver will be appointed, who, in such case, is the representative of the rights and interests of creditors and as such representative may institute necessary proceedings to cancel and set aside the debtor's fraudulent transfers of property.[2]

The difficulty experienced by the court in this class of summary proceedings, where the debtor's property is alleged to have been fraudulently conveyed, is the lack of necessary parties before the court so as to prop-

tide waters, but extended to all navigable public lakes and rivers where commerce was carried on between different states. Williamson, etc., v. Washington, etc., R. Co., 33 Gratt 624.

[2] Smith on Receiverships, § 150, and cases cited, viz.: Underwood v. Sutcliffe, 77 N. Y. 58; Bostwick v. Menck, 40 N. Y. 383; Porter v. Williams, 9 N. Y. 142; Dollard v. Taylor, 1 Jones & S. 496; Osgood v. Laytin, 48 Barb. 463; S. C. Affirm. in 5 Abb. Pr. N. S. 9; Barton v. Hosner, 24 Hun, 467; Hamlin v. Wright, 23 Wis. 491; Dunham v. Byrnes, 36 Minn. 106; Miller v. Mackenzie, 29 N. J. Eq. 291. Supplementary proceedings take the place of creditor's bills and a lien takes place on the service of the order directing the defendant to pay the debt. Lynch v. Johnson, 48 N. Y. 27. Proceedings auxiliary to execution for the discovery of property may be maintained contemporaneously with an action in equity to subject such property to the satisfaction of the judgment. Estey v. Fuller, 82 Ia. 678.

erly adjust the interests of parties and render a decree that will be effectual from a jurisdictional standpoint.[3]

§ 202. There Must be an Exhaustion of Common Law Remedies.—Supplementary proceedings are intended as a substitute for creditors' bills, and like the creditors' bills in chancery there must first be an exhaustion of common law remedies. The proceeding is not only statutory, requiring strictness as to requirements, but is also extraordinary in its nature and not to be resorted to until the common law has failed in affording adequate relief. This does not mean that there has been a failure, on the part of the plaintiff, to make his debt out of the property of the debtor, but means that under the conditions existing the remedy at law is inadequate. The plaintiff's efforts are some-

[3] It was held in Wright v. Nostrand, 94 N. Y. 31, that if the receiver desires to reach property that is alleged to have been fraudulently conveyed, but which is in the possession of a third party, or the title in him, he must institute a special proceeding against the necessary parties for such purpose. Under § 3035, Rev. Stats. Wisconsin, property of a judgment debtor in the hands of a third person can only be applied towards the satisfaction of the judgment where there is no dispute as to the ownership and amount of the property. Blabon v. Gilchrist, 67 Wis. 38. The pending of proceedings supplementary to execution is no bar to a suit in equity to reach property fraudulently conveyed. Faber v. Matz, 86 Wis. 370; Bennett v. McGuire, 58 Barb. 625; Gates v. Young, 17 N. Y. Week. Dig. 551. In supplementary proceedings an order upon third persons to turn over property in their possession to a judgment creditor is for the protection of such third persons, and not being parties to the suit, they are not bound by the order, and are not in contempt for non-compliance. Estey v. Fuller Imp. Co., 82 Ia. 678. The Iowa code providing for the imprisonment for contempt of a person disobeying an order of court, judge or referee therein is not unconstitutional, in that no jury trial is provided for (Code, ch. 3, title 18). Marriage v. Woodruff, 77 Ia. 291; Eikenberry v. Edwards, 67 Ia. 619. Where it appears that the judgment debtor has conveyed property to a third person on the same day supplementary proceedings were instituted the court has no power to take possession of the property by a receiver. It may authorize the judgment creditor to institute an action against the parties claiming the property for its recovery, and may forbid its transfer until the determination of that suit. McDowell v. Bell, 86 Cal. 615.

times ineffectual, but not by reason of the inadequacy of the remedy.[4]

§ 203. **Return of Execution Before Return Day — General Rule.** — There is no harmony in the decisions relative to the right to file a creditor's bill or institute supplementary proceedings based on the return of an execution before the expiration of the statutory period allowed for it to run. The weight of authority, as well as reason, is that the lifetime of the execution must expire. Otherwise there can be no legal determination whether common law remedies have been exhausted. Except where otherwise provided by statute the rule is that a general creditor has no standing in court, but it is within the experience of every practitioner at the bar that the obtaining of judgment, the issuing of execution thereon, and the return thereof unsatisfied, so far as any *bona fide* ef-

[4] Smith v. Weeks, 60 Wis. 94; Graham v. LaCrosse & M. R. Co., 10 Wis. 459; Seymour v. Briggs, 11 Wis. 196; Almy v. Platt, 16 Wis.* 169. Ch. 2, title 9, Code of Proc. of Wisconsin, was intended as a substitute for the creditor's bill in chancery under the old practice. But under this proceeding it was contemplated that the creditor should first exhaust his common law remedy before resorting to proceedings in aid. Re Remington, 7 Wis. 643. If the execution is issued and a return of nulla bona made before supplementary proceedings are commenced it is sufficient, though the execution is not filed until afterwards. Barker v. Dayton, 28 Wis. 367. Where a statute authorizing a judgment creditor to institute supplementary proceedings at any time within ten years after the return of an execution it means such an execution as will be effective to exhaust the remedy at law, and it does not mean an execution leviable only on the personal property. Importers' Nat. Bank v. Quackenbush, 143 N. Y. 567. When the statute provides that in supplementary proceedings the court may order property of the judgment debtor, in his hands or others, delivered up or in any other mode applied in satisfaction of the judgment it does not warrant such proceeding where the ordinary processes of law are adequate. Proceedings supplementary to execution are extraordinary and are to be resorted to only when the ordinary processes are inadequate, the purpose of this proceeding being discovery. Reardon v. Henry, 82 Ia. 134; Estey v. Fuller, 82 Ia. 678.

fort to make the debt is concerned, are frequently mere perfunctory proceedings, *pro forma* simply.[5]

§ **204. Contrary Doctrine.**—The holding of the execution for the full statutory period, or lifetime of the execution, has been held in some jurisdictions not necessary as a basis of supplementary proceedings where nothing appears showing a want of good faith, on the part of the plaintiff or the officer. Of course if it should appear that there was collusion, or an intention to use the forms of the law for the purpose of oppression or unjustifiable ends, a court of equity will not sustain it.[6]

And so where the execution is ordered to be returned by the plaintiff or his attorney, it is not sufficient.[7]

§ **205. Examination of Debtor—Discovery.**—As under the old chancery practice a debtor may be com-

[5] Platt v. Cadwell, 9 Paige, 386; Williams v. Hogeboom, 8 Paige, 469; Cassidy v. Meacham, 3 Paige, 311; Beck v. Burdett, 1 Paige, 505; Wright v. Nostrand, 94 N. Y. 31; Tyler v. Whitney, 12 Abb. Pr. 465; Fenton v. Flagg, 24 How. P. 499; Livingston v. Cleaveland, 5 How. Pr. 396; Farquaharson v. Kimball, 9 Abb. Pr. 385 n; Adams v. Bowe, 12 Abb. N. Cas. 322; Sperling v. Levy, 10 Abb. Pr. 426; Pudney v. Griffiths, 6 Abb. Pr. 211; Nagle v. James, 7 Abb. Pr. 234; Ritterband v. Maryatt, 12 N. Y. Leg. Ob. 158; McElwain v. Willis, 9 Wend. 548; Williams v. Hubbard, Walk. Ch. 28; Smith v. Thompson, Walk. Ch. 1; Beach v. White, Walk. Ch. 495; Steward v. Stevens, Harr. Ch. 169; Thayer v. Swift, Harr. Ch. 430; and see Spencer v. Cuyler, 17 How. Pr. 157; Palmer v. Colville, 63 Hun, 536.

[6] An execution returned before the expiration of the statutory period, nothing appearing to indicate want of good faith to reach property, is a sufficient foundation for a proceeding in aid. Second Ward Bk. v. Upmann, 12 Wis. 499; Russell v. Chicago T. & Tr. Co., 139 Ill. 538; F. N. Bank v. Gage, 79 Ill. 207; Bowen v. Parkhurst, 24 Ill. 257; Renaud v. O'Brien, 35 N. Y. 99; Tyler v. Willis, 33 Barb. 327; Field v. Chapman, 15 Abb. Pr. 434; Hutchinson v. Brand, 9 N. Y. 208; Tomlinson, etc., v. Shatto, 34 Fed. Rep. 380; Whitehead v. Hellen, 74 N. C. 679. And see also ante § 172.

[7] It is not a sufficient return of an execution to form the basis of proceeding in aid if it be returned by order of plaintiff or his attorney. Re Remington, 7 Wis. 642; Marz v. Spaulding, 35 Hun, 478; Stirlen v. Jewett, 63 Ill. App. 55; Scheubert v. Honel, 50 Ill. App. 597; 152 Ill. 313; Albany City Bk. v. Dorr, Walk. Ch. 317. The return of the execution must be upon the responsibility of the sheriff, and not by the direction of the plaintiff. The return must be based on the ina-

pelled to make discovery of his assets and property. And for the purpose of enabling the court to enforce its orders for an examination the debtor may be brought before the court for contempt on a proper showing, and be compelled to testify as to his assets and their disposition, either before the court or under its direction.[8]

(a) Where the proper basis has been laid for supplementary proceedings by the issuing and return of an execution unsatisfied, the debtor may be required to appear and be examined, notwithstanding the fact that another execution has been issued subsequently for the purpose of making a levy on personal property, unless it is clear that a levy under such execution will satisfy the judgment.[9]

(b) A judgment debtor's wife may be required to disclose whether she has any property of her husband under her control and may be attached for contempt for refusing to answer.[10]

bility of the officer to find property. Durand v. Gray, 129 Ill. 9; Scheubert v. Honel, 152 Ill. 313.

[8] It is contempt for a debtor to refuse to make discovery when so required. Re Rosenberg, 90 Wis. 581. In contempt proceeding based upon the refusal of a debtor to appear and testify under an order of a commissioner based upon § 3037 of the statute the statute must be strictly construed. The scope of the examination in such case relates to specific property, and not to a general discovery. Smith v. Weeks, 60 Wis. 94. As to the sufficiency of an affidavit for an order requiring the debtor to appear before a court commissioner see Lamonte v. Pierce, 34 Wis. 483.

[9] It is no objection to the examination of a debtor under supplementary proceedings after the return of an execution unsatisfied that another execution had been issued to levy on personal property unless it is clear that such levy will effectually satisfy the judgment. Sale v. Lawson, 4 Sandf. 718; Farquharson v. Kimball, 18 How. Pr. 33; Lilliendahl v. Fellerman, 11 How. Pr. 528; Smith v. Mahony, 3 Daly 285. An order directing the debtor to appear and answer concerning his property is not void for irregularity if the debtor appears and submits to an examination. Collins v. Angell, 72 Cal. 513.

[10] In supplementary proceedings the judgment debtor's wife may be required to disclose whether she has property of the husband under her control and may be attached for contempt for

§ **206. Scope of Examination.**—The scope of the examination of the judgment debtor is largely in the discretion of the court, or the commissioner before whom it is made, and the appellate court will not interfere except in case of an abuse of such discretion. Discretion of the court does not mean the mere will or caprice of the judge, but also includes the established practice of the court and an observance of the general principles of equity, so far as applicable to the existing condition of things, and the relation of the parties.[11]

(a) A commissioner has no power, unless by statute, to require a person other than the defendant to appear for examination, nor has he a right to make a restraining order against such person disposing of his property, and a statute conferring such power should be free from any constitutional restriction or criticism.[12]

refusing to answer. Re Mary J. O'Brien, 24 Wis. 547; Copous v. Kauffman, 8 Paige, 583.

[11] The scope of examination of a judgment debtor is largely in the discretion of the judge or commissioner, and the Appellate Court will not interfere except in case of an abuse of such discretion. Heilbronner v. Levy, 64 Wis. 636. An order refusing to set aside a previous order granting an attachment against a defendant for contempt in refusing to appear in supplementary proceedings is appealable. (See Sub. 2, § 10, Ch. 264, Laws of 1860, Wis.) Lamonte v. Pierce, 34 Wis. 483. As to judicial discretion see Tripp v. Cook, 26 Wend. 143; Platt v. Munroe, 34 Barb. 291.

[12] Under § 3030, Rev. Stat. of Wisconsin, a court commissioner has no power to require any person other than a defendant to appear for examination, nor has he a right to make a preliminary order restraining such person from disposing of property. Blabon v. Gilchrist, 67 Wis. 38. A court commissioner has no power to order a delivery of the debtor's property to the judgment creditor or his attorney. Nieuwankamp v. Ullman, 47 Wis. 168; Salter v. Hilgen, 40 Wis. 363; Pet. of Crandall, 34 Wis. 177; Pet. of Semler, 41 Wis. 517. The Circuit Court has power to make the order contemplated by § 88, Ch. 134, Rev. Stats. of Wisconsin. Gould v. Dodge, 30 Wis. 621. Under the Iowa statute a referee appointed by the court to examine a judgment debtor for the discovery of property in a proceeding auxiliary to execution may issue an order for the appearance of the debtor, and afterwards issue a warrant for his arrest, on proper proofs made. (See Code, § 3146, 3135.) Marriage v. Woodruff, 77 Ia. 291.

(b) If a creditor desires to avail himself of an examination of the debtor he must do so in a reasonable time after the return of the execution unsatisfied. The doctrine of *laches* is firmly established as an element of equity jurisprudence.[13]

§ **207. Power of Court to Enjoin Transfers.**—The court, however, usually by statute, has power to enjoin the transfer or other disposition of property by the judgment debtor or interference therewith, and this power by construction has been extended to embrace third persons. If it were not for this power frequently the proceeding would be fruitless. As elsewhere seen, the power to enjoin does not exist prior to judgment in the original proceeding.[14]

§ **208. When Husband not a Competent Witness.**—Where supplementary proceedings are instituted against a wife her husband is not a competent witness against her, in Wisconsin, except in so far as he may have acted as her agent. The policy of the law will not permit the domestic affairs of a family to be thus unnecessarily disturbed.[15]

[13] Ten years' delay is not reasonable. Woodward v. Hall, 75 Wis. 406; contra Owen v. Dupignac, 9 Abb. Pr. 180.

[14] Under the provisions of § 95, Ch. 134, R. S. Wisconsin, the judge may forbid the transfer or other disposition of the property of the judgment debtor, not exempt from execution, or interference therewith, and by construction this statute applies to all supplementary proceedings, whether against a debtor or a third person, and whether a receiver has or has not been appointed. Re B. F. Perry, 30 Wis. 268. An order discharging a person having property of a judgment debtor, or who is indebted to him from process for contempt in refusing to answer questions, is applicable. Ballston Spa Bk. v. Marine Bk, 18 Wis. 490; Livingston v. Swift, 23 How. Pr. 1.

[15] In supplementary proceedings against a wife her husband is not a competent witness against her, except in so far as he may have acted as her agent. Blabon v. Gilchrist, 67 Wis. 38; cf. Birdsall v. Dunn, 16 Wis. 235; Hobby v. Wis. Bank, 17 Wis. 167; Meek v. Pierce, 19 Wis. 300; Farrell v. Ledwell, 21 Wis. 182; Butts v. Newton, 29 Wis. 632, 640; Mountain v. Fisher, 22 Wis. 93; Ainsworth v. Barry, 35 Wis. 136; Hale v. Danforth, 40 Wis. 382; Stewart v. Stewart, 41 Wis. 624; Carney v. Gleissner, 58 Wis. 674. And when the husband is called as a witness it must be

§ **209. Receiver.**—The appointment of a receiver in supplementary proceeding, where the facts disclosed as to the nature of the property are such as to justify it is an incident quite common. The necessity for the appointment usually rests in the sound judicial discretion of the court, under all the circumstances of the case, having particular reference to the nature and character of the property discovered, or involved in the litigation. Not unfrequently the successful result of the proceeding depends on the preservation of the property sought to be reached *pendente lite.* In other cases the rights and interests of the parties are preserved in the subject matter of the litigation by operating it as a going concern until final disposition of the suit. There are numerous instances where the chief value of the business over which the receivership is to be extended is its good will and its preservation in *statu quo* until a sale may be had.[16]

§ **210. Power of Receiver.**—The powers of a receiver in supplementary proceedings, except where otherwise extended, or limited by statute, are the usual and customary powers of a receiver under a creditor's bill. Except as a matter of comity he has no power to sue

stated that he is called as agent of the wife. Menk v. Steinfort, 39 Wis. 370; Mountain v. Fisher, 22 Wis. 93.

[16] A receiver may be appointed in supplementary proceedings. Barker v. Dayton, 28 Wis. 367. A receiver is proper in supplementary proceedings. Second Ward Bk. v. Upmann, 12 Wis. 499. But not if it appears that the defendant has property liable to execution. Second Ward Bk. v. Upmann, 12 Wis. 499. A court commissioner in Wisconsin has power to appoint a receiver in a proper case, and the Circuit Court has no power to transfer the proceedings from the commissioner or the papers to that court. Its power is limited to a review. Clark v. Bergenthal, 52 Wis. 103. The appointment of a receiver is a sufficient adjudication that the defendant has property or effects which he refuses to apply to the payment of his debts. Holton v. Burton, 78 Wis. 321. These proceedings may be instituted against a foreign corporation having no agent and doing no business in this state, and a receiver of its property may be appointed. Logan v. McCall Pub. Co., 140 N. Y. 447.

in a foreign jurisdiction, and the legislature may properly place restrictions and impose conditions on his power in this regard.[17]

In proceedings of this nature it will sometimes be found that the right of recovery by the receiver usually appointed as to some or all the creditors, whom he represents, has been barred by some act of estoppel of such creditors and the right to question the validity of the transfer cannot be asserted. In this class of proceedings particularly the receiver is the representative of creditors, and his rights, by reason thereof, are largely shaped and to be determined by their rights as they existed at the time of his appointment. Of course the power of the receiver is frequently enlarged by the statute in many respects.[18]

§ 211. Proceedings are Ancillary.—As a general rule the proceedings are in the action in which the judgment is rendered, and are regarded as supplemental thereto. The purpose of the code procedure in authorizing an examination of the debtor by the court,

[17] Except as a matter of comity a foreign receiver has no power to sue as such in another state, except on terms and conditions imposed by the legislature. Hence a statute limiting the bringing of such suit to six months is valid. Wyman v. Kimberly-Clark Co., 93 Wis. 554. A receiver in supplementary proceedings is not by virtue of his appointment vested with the title to the property of the debtor fraudulently conveyed, except by statute. Olney v. Tanner, 10 Fed. Rep. 101; 18 do. 636, and authorities cited; Bostwick v. Menck, 40 N. Y. 383; Miller v. Mackenzie, 29 N. J. Eq. 291. He is vested with the legal title to personal property. Mandeville v. Avery, 124 N. Y. 385; Stephens v. Perrine, 143 N. Y. 476.

[18] Smith on Receivership, § 155, where the following cases are cited in support of the text: Mandeville v. Avery, 124 N. Y. 376 (reversing 57 Hun, 78; Haynes v. Brooks, 116 N. Y. 487; Metcalf v. Del Valle, 137 N. Y. 545); (affirming 64 Hun, 245); Bostwick v. Menck, 40 N. Y. 383. In so far as setting aside fraudulent transfers in an action by the receiver for that purpose it must be understood that his right of action does not extend beyond the right the creditors whom he represents would have had if the action had been instituted by them for such purpose. This is by reason of the fact that the receiver is the representative of the creditors and ex necessitate has no power beyond that which could have been

or under its direction, and the subsequent orders based thereon is to simplify and expedite the proceeding as much as possible as compared with the original proceeding in chancery.[19]

Concerning the scope of supplementary proceedings, it may be stated in general terms that, except where otherwise provided by statute, the scope is co-extensive with creditors' bills, which has been elsewhere considered.

Where the debtor has money due him out of the state the proper course is to compel the debtor to transfer the title to a receiver, who may, as assignee, recover the same.[20]

exercised by them. Kennedy v. Thorp, 51 N. Y. 174; Savage v. Murphy, 34 N. Y. 508.

[19] Supplementary proceedings are proceedings in the action in which the judgment was rendered. Barker v. Dayton, 28 Wis. 367; Collins v. Angell, 72 Cal. 513. It is a special proceeding in New York. See Code Civ. Proc., § 2423.

[20] Buchanan v. Hunt, 98 N. Y. 560: The court cannot compel the debtor to bring the money in. A judgment for alimony in a divorce suit may be enforced by supplementary proceedings. Barker v. Dayton, 28 Wis. 367.

CHAPTER VII.

LIEN OF CREDITORS' BILLS.

(See also Priority.)

§ 220. General rule.
221. Effect of lien secured.
(a) As to assignments.
(b) As to bankruptcy.
(c) As to such under execution.
(d) To operate as lis pendens.
(e) As to other creditors' bills—Dormant judgment.
(f) In case of fraudulent conveyance.
(g) Is superior to subsequent attachment.
(h) As to a junior judgment.
222. Extent of lien.
(a) Equitable assets not subject to execution.
(b) Property subject to levy and sale after receiver's appointment.
(c) Title of purchaser from fraudulent grantee unaffected, when.
(d) Mortgage prior to judgment unaffected.
(e) Priority not secured by favored creditors.
(f) Limited to such rights as plaintiff can assert.
(g) Limitations in case of foreign corporation.
223. Priority of lien as between joint plaintiffs.
224. From what time lien dates—Does not abate.
225. Lien in supplementary proceedings.

Section **220. General Rule.**—As a general rule an equitable lien is acquired by the filing of a creditor's bill, or a bill in the nature of a creditor's bill, upon the choses in action and equitable assets of the judgment debtor. The effect of this lien is such in its relationship to the debtor that it remains unaffected by his death, and in its relationship to other creditors a priority is secured over them without reference to the priority of judgments, in the event that the suit terminates successfully for the plaintiff. With reference to chattels that

are subject to levy and sale under execution, where the action is not brought in aid, there seems to be some doubt whether the mere commencement of suit creates a lien or priority in favor of plaintiff as against other creditors who subsequently actually levy on the property, before it is placed in *custodia legis* by means of a receivership in the creditor's suit. Whatever doubt, however, upon this point is removed by the actual reduction of the chattels to possession by the court through the appointment of a receiver, which in effect is an equitable levy.[1]

[1] Storm v. Waddell, 2 Sandf. Ch. 494; Eameston v. Lyde, 1 Paige Ch. 637; Sweeny v. Grape Sugar R. Co., 30 W. Va. 443; State v. Bowen, 38 W. Va. 91; Albany City Bk. v. Schermerhorn, Clark's Ch. 297. The plaintiff acquires by the commencement of his suit a lien upon the chose in action and equitable assets of the debtor which entitles him, in the successful event of the action, to a priority of payment in preference to other creditors, irrespective of the priority of judgments. First Nat. Bk. v. Shuler, 153 N. Y. 163; Corning v. White, 2 Paige Ch. 567; Roberts v. Albany, etc., R. Co., 25 Barb. 662. And this lien is not defeated by the death of the debtor before judgment. Brown v. Nichols, 42 N. Y. 26. But in respect to chattels subject to be taken on execution the rule seems to be that unless the action is brought in aid of an execution the mere commencement of an action creates no lien as against other creditors, and if any lien exists it is so incomplete and imperfect that it is subject to being overreached by a subsequent levy in favor of other creditors made before the appointment of a receiver. First Nat. Bk. v. Shuler, supra; Lansing v. Easton, 7 Paige, 364; Beck v. Burdett, 1 Paige, 305; Becker v. Torrance, 31 N. Y. 631; Van Alstyne v. Cook, 25 N. Y. 489; Davenport v. Kelly, 42 N. Y. 193; Storm v. Waddell, 2 Sandf. Ch. 494; Lynch v. Johnson, 48 N. Y. 27. But when a receiver has actually been appointed before levy the appointment operates as an equitable levy and a sequestration of the chattels for the benefit of the plaintiff. It is the appointment of a receiver which makes the lien effective and gives the plaintiff a priority. First Nat. Bk. v. Shuler, supra. Filing a creditor's bill and the service process create a lien in equity upon the effects of the judgment debtor, and for this reason it has been termed an equitable levy. Miller v. Sherry, 69 U. S. 237. In speaking of the preference or lien acquired by a plaintiff under a creditors' bill Chancellor Kent in McDermott v. Strong, 4 Johns. Ch. 687, says: "The plaintiffs come in the character of execution creditors, and have thereby acquired by means of their executions at law what this court regards as a legal preference or lien on the property so placed in trust. * * Though it be the favorite policy of this court to distribute assets equally among creditors pari passu. Yet whenever a judicial preference has

§ 221. **Effect of Lien Secured.**—(a) The effect of the lien thus secured is that an assignment made thereafter is subject thereto, and if the scope of the bill is broad enough payments cannot be made to the debtor after the lien attaches.[2]

(b) Nor is the lien affected by the subsequent bankruptcy of the debtor.[3]

been established by the superior legal diligence of any creditor, that preference is always preserved in the distribution of assets by the court." Cf. Bayard v. Hoffman, 4 Johns. Ch. 450. The return of an execution gives no lien on property fraudulently conveyed. The lien in such case is obtained by the filing of the bill. Ballentine v. Beall, 3 Scam. 203; George v. Williamson, 26 Mo. 190; Davis v. Bonney, 89 Va. 755; Wallace v. Treakle, 27 Gratt. 479. The filing of a creditors' bill, or bill in chancery, creates a specific equitable lien on the thing or property sought to be subjected to an execution, for the reason that it brings such property within the control and jurisdiction of the court. Bridgman v. McKissick, 15 Ia. 260; Cf. Werborn v. Kahn, 93 Ala. 201. The lien extends to the rents and profits accruing on real estate during the statutory period allowed for redemption from an execution sale, or mortgage foreclosure sale. Farnham v. Campbell, 10 Paige Ch. 598.

[2] Edmeston v Lyde, 1 Paige Ch. 637; Spader v. Davis, 5 Johns. Ch. 280; Corning v. White, 2 Paige Ch. 567; McDermott v. Strong, 4 Johns. Ch. 687. Not so, however, if the assignment is first. Stilwell v. Van Epps, 1 Paige Ch. 615. The usual practice in suits by judgment creditors is to obtain in due season, where the facts warrant it, the appointment of a receiver, who is to collect and apply the assets. The statute does not, nor do the rules, declare any lien to be created by merely filing a creditor's bill; and until the debtor is enjoined from dealing with his property there is nothing in the law to prevent any honest disposal of it, and until a receiver is appointed there is nothing which will act on the property itself. German American Seminary v. Saenger, 66 Mich. 249. Except for the statute a judgment creditor's bill is like any other suit, a mere personal litigation to which the death of the judgment debtor puts an end where no lien has attached. German American Seminary v. Saenger, supra; Jones v. Smith, Walk. Ch. 115. The lien acquired is superior to all subsequent liens, encumbrances or assignments and takes precedence over judgments acquired after the bill was filed. Bobbington v. Washington B. Co., 27 Wash. L. Rep. 22.

[3] Sedgwick v. Menck, 6 Blatchf. 156; Carr v. Fearington, 63 N. C. 560. Pending a creditor's suit the discharge of the debtor in bankruptcy does not impair the creditor's lien by his bill. Storm v. Waddell, 2 Sandf. Ch. 494. The filing of a bill by a judgment creditor in which specific assets are described as having been fraudulently transferred secures a lien thereon that will not be affected by a subsequent proceeding in bankruptcy. Reid, M. & Co. v. Cross, 41 Ohio L. J. 135; 31 Chicago Legal News, 216.

(c) Nor by a sale of the property under execution.[4]

(d) But in order that a creditors' bill may operate as a *lis pendens* and notice as to real estate the description of the property must be definite so that a person interested or to be affected thereby may know what property is subject to litigation. In other words, the filing of a bill and service of process operate as a *lis pendens* as to purchaser *pendente lite.* This at least should be the rule as to all property described in the bill and alleged to have been fraudulently conveyed.[5]

(e) After a court of equity has taken possession of an insolvent's estate it is so far in the custody of the law that no creditor can thereafter by a creditors' bill obtain a lien which will give priority over other creditors.[6]

But the lien acquired by the filing of a creditors' bill is not lost by the filing of a subsequent creditors' bill under which a sale is made prior to a decree in the first suit; nor by permitting the judgment on which the bill is based to become dormant by failure to issue execution during the pendency of the proceedings.[7]

(f) The filing of a creditors' bill in a case where the husband has purchased property and procured the title to be placed in the name of his wife accomplishes three things: (1) A specific lien on the property in favor of

[4] Newdigate v. Jacobs, 9 Dana 18. It is the very essence of the lien that no matter into whose hands the property goes it passes cum onere. Burton v. Smith, 38 U. S. 464. A creditor of an insolvent debtor may by a proceeding at law or by attachment or execution acquire a specific lien on property which will give him a preference over unsecured creditors under a bill afterwards filed. But after a court of equity has once acquired jurisdiction of the assets of the debtor, it will be exclusive. Roseboom v. Whittaker, 132 Ill. 81.

[5] Miller v. Sherry, 69 U. S. 237; Griffith v. Griffith, 9 Paige Ch. 315.

[6] Russell v. Chicago Tr. & S. Bk., 139 Ill. 538; Roseboom v. Whittaker, 132 Ill. 81.

[7] Shepherd v. Woodfolk, 10 Lea 593. The lien is not lost by permitting the original judgment to become dormant by failing to issue execution thereon during the pendency of the creditors' suit. Cincinnati v. Hafer, 49 Ohio St. 60, 27 Ohio L. J. 151.

the plaintiff (2) which prevents alienation thereof by defendants and (3) a superior equity in the property for the satisfaction of plaintiff's claim.[8]

(g) The lien acquired by the filing of the bill and service of process is superior to an attachment levied afterward.[9]

(h) But in New York it has been held that there is no preference as to personal property over a prior judgment until a receiver is appointed.[10]

§ 222. Extent of Lien.—(a) The lien obtained by the filing of a creditors' bill extends to the equitable assets of the debtor, but does not embrace the property of the debtor which is liable to execution, and choses in action.[11]

[8] Bridgman v. McKissick, 15 Ia. 260; Cf. Edmeston v. Lyde, 1 Paige 637; Corning v. White, 2 Paige 567; Burrell v. Leslie, 6 Paige 445; Gordon v. Lowell, 21 Me. 251; Miers v. Zenesville & Co., 13 Ohio 197; Eaton v. Patterson, 2 S. & P. (Ala.) 9; Hendricks v. Robinson, 2 Johns. Ch. 283; Brinkerhoff v. Brown, 4 Johns. Ch. 671; McDermott v. Strong, 4 Johns. Ch. 687; Ebgell v. Haywood, 3 Atk. 457. The provisions of Va. Code, Sec. 2460, relating to liens of creditors, does not include only creditors without notice, but extends to all creditors. Davis v. Bonney, 89 Va. 755.

[9] McDermott v. Eborn, 90 Ala. 258. But under Miss. Code, Sec. 503, the lien acquired is not superior to attachments levied before the bill was filed. Levy v. Marx, Miss. (1880.)

[10] Davenport v. Kelly, 42 N. Y. 193; Storm v. Waddell, 2 Sandf. Ch. 494; Van Alstyne v. Cook, 25 N. Y. 489; Cf. Lansing v. Easton, 7 Paige Ch. 364; West v. Fraser, 5 Sandf. 653.

[11] Gormerly v. Chapman, 51 Ga. 421; Judson v. Lyford, 84 Cal. 505; Albany City Bk. v. Schermerhorn, Clark's Ch. 297; Davenport v. Kelly, 42 N. Y. 193. While the commencement of an action in the nature of a creditor's bill creates a lien upon the choses in action and equitable assets of the debtor, it does not create a lien upon his tangible personal property subject to levy under execution unless a receiver is appointed. Kitchen v. Lowery, 127 N. Y. 53; Knower v. Central Nat. Bank, 124 N. Y. 552; Storm v. Waddell, 2 Sandf. Ch. 494; Lansing v. Easton, 7 Paige 364. As to personal property which is the subject of a levy and sale on execution, a creditor by an equity suit acquires no preference as against a judgment creditor of the debtor until the entry of an order appointing a receiver in such equity suit. The vigilant creditor who, by his execution, seizes and sells the property of his debtor before the appointment of a receiver in an equity action secures a preference which the law sanctions and protects. Davenport v. Kelly, 42 N. Y. 193. Equitable interests are not subject to a lien in favor of creditors until an execution has been returned and

(b) The tangible property of the debtor subject to levy and sale and which passes into the custody of the court by the appointment of a receiver.[12]

(c) The lien of a judgment and the pending of a creditors' bill to impeach a fraudulent conveyance do not affect the title of a purchaser from the fraudulent grantee where the judgment was subsequent to the conveyance.[13]

(d) And so a mortgage which is prior in point of time to a judgment on which a creditors' bill is filed to set aside a fraudulent conveyance has priority over the lien of the creditors' bill.[14]

(e) Where a creditor is permitted to obtain a judgment without delay in order that he may file a creditors' bill in behalf of all creditors he has no priority of lien or advantage over other creditors.[15]

(f) If the filing of a bill creates a lien only on the assets of the debtor held at that time it follows as a logical deduction that where the assets consist of accounts, or choses in action, and the debtor himself could not maintain an action thereon for the recovery thereof the creditor can secure no greater rights therein; nor can the bill be maintained against one who has funds

a bill has been filed. Dunlevy v. Tallmadge, 32 N. Y. 457; Crippen v. Hudson, 13 N. Y. 161. A creditor's bill will be sustained as to debts, evidenced by bills and notes, and when suit is commenced by service of process or notice it operates as an equitable levy and creates a lien in equity upon the effects of the judgment debtor, and every species of property belonging to him may be reached and applied to the satisfaction of his debts. Bragg v. Gaynor, 85 Wis. 468.

[12] See preceding note.

[13] Miller v. Sherry, 69 U. S. 237. The judgment is not a lien on the real estate of the debtor which before the rendition of the judgment he has conveyed to defraud creditors. The reason for this is in the fact that as between the grantor and grantee the conveyance is valid and no title, legal or equitable, remains in the grantor upon which the lien can rest. Union Nat. Bk. v. Lane, 177 Ill. 171; Rappleye v. International Bk. 93 Ill. 396; Davidson v. Burke, 143 Ill. 139; Hallorn v. Trum, 125 Ill. 247; Lyon v. Robbins, 46 Ill. 276.

[14] Trimble v. Turner, 13 S. & M. 348.

[15] Talcott v. Grant, etc., Co., 131 Ill. 248.

in his hands belonging to the debtor but has an offset against such funds.[16]

(g) It seems that where a bill is filed against a foreign corporation, and there is no service on the corporation, no lien is acquired upon debts due such corporation from residents of another state than that in which the suit is brought.[17]

§ 223. Priority of Lien as Between Joint Plaintiffs.—Where two judgment creditors join in a creditors' bill the creditor who first had execution in the hands of the sheriff has been held to have priority. This is based upon the idea that the lien secured by the filing of the creditors' bill relates back to the lien secured by the judgment and execution.[18]

§ 224. From What Time Lien Dates.—The rule is not uniform that the lien secured by the filing of a creditors' bill dates as of the filing the bill or of the service of process. Some courts hold that the lien secured by creditors is not in the order in which the bills are filed, but is in the order in which the judgments are rendered on which the bills are based.[19]

The lien does not abate by the death of the judgment

[16] Bonte v. Cooper, 90 Ill. 440. Unless by statute, a judgment creditor can acquire no better right to the estate of a debtor than the debtor himself has when the judgment is recovered. He takes it subject to every liability under which the debtor held it, and subject to all the equities which exist at the time in favor of third parties. Shipe v. Repass, 28 Gratt. (Va.) 716.

[17] Holbrook v. Ford, 153 Ill. 633.

[18] Haleys v. Williams, 1 Leigh. 140.

[19] The courts hold in many cases that the lien secured by creditors is not in the order in which the creditor's bills are filed but is in the order in which the judgments are rendered or docketed. White's Bank, etc. v. Farthing, 101 N. Y. 344; Sconton v. Benders, 3 How. Pr. 185; Chautauqua Co. Bk. v. Risley, 19 N. Y. 369; Codwise v. Gelston, 10 Johns. 507; Gracey v. Davis, 3 Strobh. Eq. 55; Jacoby's Appeal, 67 Pa. St. 434; Hoffman's Appeal, 44 Pa. St. 95; Jackson v. Holbrook, 36 Minn. 494; McMeekin v. Evans, 1 Hill Ch. 288. In other courts it is held that the lien dates from the filing of the bill. Freedman's Sav. & Tr. Co. v. Earle, 110 U. S. 710; Day v. Washburn, 65 U. S. 352. The filing of a creditor's bill and service of process create a lien on the property of the debtor so that it cannot be sold thereafter except subject to the lien. King

debtor, but survives against the assets in the hands of the administrator,[20] and of necessity must relate to the property owned at the time of filing the bill or the service of process. A supplementary bill is necessary in order to acquire a lien on subsequently acquired property.[21]

§ 225. Lien in Supplementary Proceedings.—As in creditors' proceedings by creditors' bill so in proceedings supplementary a lien is acquired upon the equitable assets of the debtor. But in order to have priority over the levy of another creditor the order of examination should be immediately followed by the appointment of a receiver. The idea seems to be that the mere order for an examination is not sufficient of itself to create a lien and must be followed by the appointment of a receiver which operates as an equitable levy.[22]

v. Goodwin, 130 Ill. 102; First Nat. Bk. v. Gage, 93 Ill. 172; Hallorn v. Trum, 125 Ill. 247. And a transfer thereafter is subject to the lien. King v. Goodwin, supra. The general rule is that the filing of a creditor's bill and service of process create a lien on the equitable assets of the judgment debtor and this without an order for an injunction or the appointment of a receiver. The liens thus acquired cannot be impaired by a voluntary assignment of the debtor, or the intervening claim of other creditors. Lynch v. Johnson, 48 N. Y. 27; Miller v. Sherry, 69 U. S. 237; Adsit v. Butler, 87 N. Y. 585; Roberts v. Albany, etc., 25 Barber 662; Brown v. Nichols, 42 N. Y. 26; Storm v. Waddell, 2 Sandf. Ch. 494. The lien obtained by the filing of a creditor's bill and service of process has priority over the widow's award from her husband's estate, the husband having died after the accruing of the lien under the bill. King v. Goodwin, 130 Ill. 102. The filing of a creditor's bill and the service of process create a lien in equity upon the effects of the judgment debtor and upon the land fraudulently conveyed by him. The lien of a judgment under the statute does not extend to property fraudulently conveyed prior to the judgment. Davidson v. Burke, 143 Ill. 139.

[20] Brown v. Nichols, 42 N. Y. 26.

[21] Storm v. Waddell, 2 Sandf. Ch. 494; Eager v. Price, 2 Paige 333; First Nat. Bk. v. Gage, 93 Ill. 172.

[22] Under sections 292 and 294 of the New York Code it was held that the service of the order in supplementary proceedings takes the place of the commencement of suit under the prior chancery practice and gave the creditor a lien on the equitable assets of the debtor. Lynch v. Johnson, 48 N. Y. 27; Edmonston v. McLoud, 16 N. Y. 543; Cf. Brown v. Nichols, 42 N. Y. 26.

CHAPTER VIII.

PRIORITY AMONG CREDITORS.

§ 235. Priority defined.
236. General rule.
(a) Priority of maturity of no effect.
(b) Several bills—Rule as to priority.
237. Exceptions to rule—Waiver.
238. Reasons for rule of priority.
(a) Lien result of filing bill not of judgment.
239. Rule where bill filed in behalf of all.
(a) Priority must be obtained in good faith.
(b) Partnership and individual creditors.
(c) Questions of priority are equitable.
240. Priority in relation to other liens.
(a) Mortgage lien.
(b) Attachment.
(c) Legal preferences.
(d) Chattel mortgage.
(e) Creditor proving debt and participating in dividend, rights of.
241. Priority of resident over foreign creditors of insolvent corporation.
Judgment of justice of the peace gives no priority, when.
242. Judgment need not be a lien when conveyance made.
243. Fraudulent grantee cannot question priorities.
244. Supplementary Proceedings—Priorities under.
245. Discontinuance of assignment—No priority.
246. Statutory charge in favor of all creditors gives no priority.
247. Priority not permitted in violation of agreement.
Priority where mortgage and assignment simultaneous.
248. Priority of one dealing with fraudulent grantee—When.

Section **235. Priority Defined.**—The priority which one creditor obtains over another is not to be confounded, as is frequently done, with the preference which one creditor obtains over another. Priority as used in its relationship to creditors' bills and equitable proceedings in the nature of creditors' bills and the rights of creditors thereunder, has reference wholly to the advantage

which one creditor obtains by his superior diligence in pursuing such equitable remedies as the law gives him and the discovering and uncovering thereby of the property and effects of the debtor which ought in equity to be appropriated and applied in the satisfaction of his debts. The law justly rewards the diligent creditor who by his timely efforts succeeds in discovering assets of the debtor which are inequitably withheld from his creditors by some fraudulent act or deed deemed in law as unjust and improper. Whereas the preference which one creditor obtains over another has relation solely to the advantage one creditor secures over another by some act or transaction of the debtor intended by him as a payment, or security of the favored creditor independent of any meritorious action or proceeding by such creditor. Preference may also relate to the rights and remedies given usually to a class of persons by the statute on account of labor and services rendered or materials furnished.

§ **236. General Rule.**—Subject to certain limitations and exceptions to be noticed later on the general rule in regard to the priority which one creditor obtains over another growing out of the filing of a creditors' bill, or other equitable proceeding in the nature thereof, is that the creditor who secures a judgment against his debtor, issues execution thereon and obtains a return thereon *nulla bona,* thereby exhausting his legal remedy against the debtor, and files his bill in equity whereby the equitable assets and property of such debtor are discovered and made available to the payment of debts, will thereby acquire a priority or right in equity to have the same first applied in the payment of his judgment as against other creditors who in the meantime remain passive.[1]

[1] Where a creditor has through the instrumentality of a court of equity discovered property of his debtor which he had before been

(a) Priority in the maturity of a claim against a fund to be distributed in equity gives no priority as to satisfaction. There must *ex necessitate* be a lien of some nature legal or equitable as a basis for priority.[2]

(b) Where there are several successive creditors' bills against the same defendant each of the several plaintiffs is entitled to priority over all creditors whose debts have not been reduced to judgment, and priority among themselves in the order of time of filing their respective bills.[3]

unable to discover and seize by execution, he becomes entitled to a priority over other creditors, even prior judgment creditors. Rappleye v. International Bk., 93 Ill. 396; Gordon v. Lowell, 21 Me. 251; Edmeston v. Lyde, 1 Paige 637; Smith v. Lind, 29 Ill. 24; Lyon v. Robbins, 46 Ill. 276. This is but an application of the maxim vigilantibus non dormientibus jura subvieriant. Talcott v. The Grant Wire S. Co., 131 Ill. 248. A creditor who first files a bill obtains a priority over other creditors as to the effects of the defendant not subject to execution. Talcott v. Grant Wire S. Co., 131 Ill. 248; Lyon v. Robins, 46 Ill. 276; Young v. Clapp, 40 Ill. App. 312; King v. Goodwin, 130 Ill. 102; Cole v. Marple, 98 Ill. 58. This principle is based on the idea that an active creditor is to be rewarded for his diligence, though its enforcement sometimes operates with apparent harshness on other creditors equally meritorious and particularly so where the priority creditor is assisted by the connivance of the debtor, in his race for advantage.

[2] America, etc., Co. v. Northwestern, etc., Co., 166 Mass. 337; Eastman v. Foster, 8 Metc. 19; Franklin Co. Nat. Bk. v. First Nat. Bk., 138 Mass. 518; Mason v. Pomeroy, 151 Mass. 164; Fogg v. United Order of Golden Lion, 159 Mass. 9; Buswell v. Order of Iron Hall, 161 Mass. 224; Gorham v. Mutual Aid Soc., 161 Mass. 357; Kittredge v. Osgood, 161 Mass. 384; Merrell v. Com. Ins. Co., 166 Mass. 238.

[3] Russell v. Chicago T. & S. Bk., 139 Ill. 538. The better rule and the one more in accordance with established principles of equity is to give to each plaintiff in several creditors' bills against the same defendant priority over all creditors who have not obtained judgments, and priority among themselves in the order of time of the filing of their respective bills. Storm v. Waddell, 2 Sandf. Ch. 494; Burrall v. Leslie, 6 Paige Ch. 445. The preference thus obtained is a legal vested right. Safford v. Douglas, 4 Edw. Ch. 537. A creditor's bill filed by a particular creditor to enforce his own judgment and not in behalf of creditors generally gives a court of equity jurisdiction of the equitable assets for that particular purpose and it does not involve a complete and final distribution of the assets among all creditors. Russell v. Chicago T. & S. Bk., 139 Ill. 538. The first creditor's bill filed obtains priority. Safford v. Douglas, 4 Edw. Ch. 537; Boynton v. Rowson, Clarke's Ch. 584; Hayden v. Bucklin, 9 Paige Ch. 512; Pullis v. Robison, 73 Mo. 201; Petway v.

§ **237. Exceptions to the Rule—Waiver.**—The priority obtained by the application of the rule mentioned in the preceding section being a result growing out of affirmative action of the plaintiff may be waived by the creditor entitled thereto by filing his bill in his own behalf and in behalf of such other creditors similarly situated—judgment creditors—who may join in the prosecution of the suit.[4]

§ **238. Reason for Rule as to Priority**—The reason for the priority given to the diligent creditor has sometimes been placed upon the ground of a supposed lien which he obtains by the filing of a bill. The filing of the bill and service of process thereon has also been denominated an equitable levy on the property and effects of the debtor. It is believed, however, that the use of the terms lien and equitable levy, strictly considered, have reference to the effect of the filing of the bill in relation to the debtor and his grantees and their inability thereafter to transfer or convey the property sought to be reached rather than the relationship of creditors to each other. Whatever reason may be given the priority acquired by the creditor who is diligent is well established in courts of equity and is founded in justice.[5]

Hoskins, 12 La. 107. A subsequent suit, commenced in behalf of all the creditors, will not affect a former suit, unless an order of court be obtained by the defendants, directing such former creditor to come in under the subsequent proceeding. Van Wezel v. Wychoff, 3 Sandf. (N. Y.) Ch. 528. Fractions of a day will be considered in determining which bill is filed first. Petway v. Hoskins, supra.

[4] Talcott v. The Grant Wire S. Co., supra.

[5] Where a creditor files a bill to subject property or funds in the hands of a third person to the payment of his debt, he thereby obtains a lien upon such property or fund; and on recovery he will be entitled to a preference to the exclusion of other creditors. Cole v. Marple, 98 Ill. 58; Lyons v. Robbins, 46 Ill. 276; Rappleye v. International Bk., 93 Ill. 396; Ballentine v. Beall, 3 Scam. 203. A party obtaining a lien, prior to the assignment, will be protected in such lien as against a subsequent assignment. Plume v. Caldwell, 136 Ill. 163.

The lien, if it may be so termed, which results in the priority of one creditor over others is not by reason of any lien secured by the rendition of the judgment which is made the basis of the bill, for, as is frequently the case, the bill resulting in a priority is based on a judgment later in point of time to other judgments on which later bills are predicated. Besides in many cases the bill seeks to reach and appropriate the real estate of the debtor which has been fraudulently conveyed to another where, as between the parties, the title passes to the grantee and is voidable only by creditors injured thereby who by appropriate proceedings annul the transaction. In such case there is nothing to which the lien of the judgment could attach and hence priority cannot be based on the judgment lien.[6]

[6] After a conveyance fraudulent as to creditors' judgments against the debtor do not become liens on the property conveyed in the order of their rendition. But the diligent creditor who first seeks the aid of a court of chancery by filing a bill in chancery to reach such property so fraudulently conveyed obtains a priority. Lyons v. Robbins, 46 Ill. 276; Miller v. Sherry, 69 U. S. 237; Corning v. White, 2 Paige 567; Hayden v. Bucklin, 9 Paige 512; Edmeston v. Lyde, 1 Paige 637; Gordon v. Lowell, 21 Me. 251; Smith v. Lind, 29 Ill. 24. It has been held, however, that where a creditor's bill is filed in behalf of all creditors to reach property fraudulently conveyed, the judgment creditors are paid in the order of the rendition of their judgments, but general creditors are paid pari passu. Birely v. Staley, 5 Gill. & J. 432. When it appeared that a judgment was rendered against a debtor and subsequently he purchased real estate and had the title conveyed to his wife for the purpose of defrauding creditors, and on this judgment a creditor's bill is filed making the debtor and wife defendants, along with another judgment creditor whose judgment was senior in point of time to that of plaintiff and the senior judgment creditor filed a cross-bill setting up his seniority, claiming a priority over the plaintiffs, alleging a sale of the property by the sheriff under his judgment, and asking to have plaintiffs' bill dismissed and his title quieted and confirmed and under this state of facts the question arose as to the priorities of the complainants in the original bill and the cross complainants. Complainants complied with the requirements of the statute relative to equitable actions supplemental to execution. Cross-complainants took the other course of levying on the property, selling the same, and then asking the court to quiet their title. Held that the equities of the complainant were superior to those of the cross-complainant in a question of priority between them. That while

As just observed in this connection, a conveyance though void as to creditors who take steps to avoid the same passes all the estate of the grantor in the property, so that a subsequent judgment against the grantor does not become a lien on such property fraudulently conveyed. If this were not so the prior judgment would, of necessity, confer priority on the plaintiff therein. The right of a judgment creditor to priority accrues by reason of his first seeking in a court of equity to set aside the fraudulent conveyance and apply the property in satisfaction of his indebtedness and his right dates from the commencement of suit for that purpose, or as held in some jurisdictions from the service of process.

§ 239. Rule Where Bill Filed in Behalf of All. —The rule giving the plaintiff priority, though a junior judgment creditor, is not applicable, however, if the junior judgment creditor files his bill in behalf of himself and all other creditors who come in and prove up their claims, as he has, in all cases, a right to do.[7]

(a) The priority obtained by a creditor in order to be available as to other creditors must be, as to them, in the utmost good faith. The effect may be to defeat other creditors entirely in the collection of the debts, but, if the motive in securing the priority is to delay and defeat other creditors the priority thus secured will not be sustained in a court of equity.[8]

(b) If there are individual and partnership creditors having demands against assets individual creditors will have priority as to the individual assets and partnership

the lien of the judgment might in some sense reach an equitable interest, yet such a lien was effectual only in equity, dependent so far as priority is concerned upon a prompt resort to an equitable action, and plaintiffs being first to put the equitable machinery in force were entitled to priority. Bridgman v. McKissick, 15 Ia. 260; Neal v. Foster, 13 Sawy. 236; 34 Fed. Rep. 496.

[7] Pennell v. Lamar Ins. Co., 73 Ill. 303.

[8] Weber v. Mick, 131 Ill. 520.

creditors will have priority as to partnership assets. This grows out of the nature of partnership relationships.[9]

(c) Questions as to the priorities of creditors with reference to each other touching the assets and funds of an insolvent are purely equitable in their nature and the fact that they grow out of common law proceedings is no reason why they should not be considered and determined in equity.[10]

§ **240. Priority in Relation to Other Liens.**—(a) Where two or more creditors are engaged in a race for priority, and one secures a mortgage for a *bona fide* debt, such mortgage is not defeated by or postponed to a more tardy or less fortunate creditor, by a showing of a fraudulent intent on the part of the grantor in the making of the mortgage, and knowledge of such intent on the part of the mortgagee. As between two creditors the fraud of the grantor must be participated in by the grantee. Securing a *bona fide* debt by the latter, even with knowledge on his part of the intention of the grantor, is not fraudulent.[11]

(b) Liens acquired against the property of by attachment when it is known that the effect of the attachment will be to precipitate a crisis in the affairs of the company will be sustained and protected as against other creditors of the corporation.[12]

[9] Owing to the nature of partnership relationships, individual creditors have priority as to individual assets and partnership creditors as to partnership assets. Dillworth v. Curts, 139 Ill. 508; Doggett v. Dill, 108 Ill. 560.

[10] Questions as to the priorities of creditors to the funds of an insolvent are purely equitable, and the fact that they grow out of common law proceedings is no reason they should not be tried in equity. Staver Wagon, etc., Co. v. Halsted, 78 Ia. 730.

[11] Chase v. Walters, 28 Ia. 460. A mortgagee has no right of priority to rents collected by a receiver in an administration suit; he must share with the other creditors alike. Coddington v. Executors, etc., 36 N. J. Eq. 574.

[12] An officer of a corporation loaned money to it under a misapprehension as to its condition. When he had been an officer but a few weeks and not being responsible for its financial condition, may attach the corporate property, though he knows

(c) And, hence, it will be seen that where the law gives a priority such priority will not be disturbed by a court of equity, unless such priority is obtained by fraudulent means. The same rule would prevail where a legal and valid lien exists by act of the parties. It is not within the purview of a court of equity to disturb valid and *bona fide* rights legally obtained.[13]

(d) And where an execution creditor has a legal right to redeem from a chattel mortgage by coming into a court of equity, and thereby obtains a priority such priority will be protected in equity.[14]

(e) Where a creditor proves up his debt before a master pursuant to an order of court directing the same and files his petition to prevent a dismissal of the suit and a discharge of the receiver appointed therein and receives his *pro rata* share of the dividend declared by the receiver he is estopped from claiming a priority over other creditors.[15]

§ 241. Priority of Resident Over Foreign Creditors.—It has been held to be the policy of the law to secure the resident creditors of a foreign insolvent corporation priority over foreign creditors so far as the assets of the corporation situated within the state are concerned. This principle is based upon the supposed injustice of requiring a domestic creditor to go into a foreign jurisdiction to assert his rights and obtain satisfaction of his debt. A stronger reason for this rule would seem to be in the fact that a creditor residing in a

the attachment will precipitate a crisis in the affairs of the company, and such attachment will be good as against other creditors. Rollins v. Staver Wagon Co., 80 Ia. 380; Cf. Warfield v. Canning Co., 72 Ia. 666; Garrett v. Plow Co., 70 Ia. 697. A creditor's bill will not have priority over the lien acquired by an attachment and judgment thereon. McKinney v. Farmers Nat. Bk., 104 Ill. 180.

[13] State Bank v. Marsh, 1 N. J. Eq. 288.

[14] Disborough v. Outcalt, 1 N. J. Eq. 298.

[15] Jackson v. Lahee, 114 Ill. 287.

particular state and contracting with a foreign corporation may, and no doubt frequently does, contract with reference to the property of the corporation within the state where the contract is made, and the apparent security thus afforded him in his contractual relations.[16]

§ 242. Judgment Need Not be a Lien When Conveyance Made.—The fact that at the time the alleged fraudulent conveyance was made the judgment against the debtor-grantor was not a lien on the debtor's land by reason of no execution having been issued thereon within one year from the date of rendition as required by the statute in order to constitute a lien does

[16] It is the policy of the law to secure resident creditors of a foreign insolvent corporation as against foreign creditors as to the assets within the state. Webster v. Judah, 27 Ill. App. 294; Ford v. Holbrook, 50 Ill. App. 547; Hunt v. Gilbert, 54 Ill. App. 491; Heyer v. Alexander, 108 Ill. 385; May v. First Nat. Bk., 122 Ill. 551; Woodward v. Brooks, 128 Ill. 222; Henderson v. Schaas, 35 Ill. App. 155; Fawcett v. Supreme Sitting O. of I. H., 64 Conn. 170. But see contra under certain circumstances, Buswell v. Supreme Sitting, etc., 161 Mass. 224. The doctrine announced in the text is no doubt sustained by the great weight of authority in this country at the present time. It is doubtful, however, if it is sustained by correct principles of equity. There would seem to be in a commercial country no equitable grounds for advantage based merely on residence. So far as contractual relationship is concerned it is doubtful if the person dealing with a foreign corporation ever contemplates for a moment its foreign domicile. If it be true as a matter of law that the assets of a foreign insolvent corporation constitute a trust fund for the benefit of creditors then all creditors similarly situated should apparently be placed on the same footing. This is particularly so if the equitable maxim, Equality is Equity, is sound doctrine in principle. Moreover if the constitutional theory of the government is such that it fosters the free and untrammeled commercial relationship between the different states of the union no good reason is apparent why state lines should place restrictions and limitations upon the full and complete enjoyment of this guaranty. Any other view places a premium on provincialism and retards the growing principle of interstate and international comity. The supreme court of Massachusetts in the case of Fawcett v. Supreme Sitting, etc., supra, has taken the most advanced ground along the lines here suggested of any court in this country. Every state owes protection to its own citizens and when nonresidents deal with them it is a just and legitimate exercise of authority to hold and appropriate any property owned by nonresidents to satisfy the claims of its citizens. Bragg v. Gaynor, 85 Wis. 468; Pennoyer v. Neff. 95 U. S. 714.

not prevent the creditor after the revival of his judgment and the issuing of an execution thereon from questioning the *bona fides* of the transaction.[17]

§ **243. Fraudulent Grantee Cannot Question Priorities.**—The fraudulent grantee of property conveyed in fraud of creditors is not in a position to assign for error the giving of priority to creditors on whose bills the conveyances are set aside. The relative rights of creditors is a matter in which he has no concern.[18]

§ **244. Supplementary Proceedings.**—Under supplementary proceedings, which, in their nature are equitable proceedings, and are substitutes for creditors' bills, as a general rule all property and effects which could be reached under the latter may be made available under the former and rights of priority under one are applicable to the other.[19]

§ **245. Discontinuance of Assignment—No Priority.**—Where a statute concerning voluntary assignments provides for a discontinuance of the assignment proceedings upon the assent of the debtor and a majority of his creditors in number and amount and in such case all parties to be remitted to the same rights and duties as existed at the date of the assignment, it is not a fraud on creditors where the consent to a dismissal is obtained upon a promise of the debtor to pay creditors in full, and the estate is reinvested in the debtor on dis-

[17] Bennett v. Stout, 98 Ill. 47. The case of Newman v. Willetts, 52 Ill. 98, is not to be understood as announcing a different doctrine. That case was only intended to hold that where a bill is filed in aid of an execution, the judgment on which the execution was issued must be at the time of filing the bill a lien on the land sought to be reached for the payment of the execution and what was said in respect to the necessity of the existence of a lien in order that the creditor might have his remedy was only in reference to the facts of that case. Id.

[18] Coale v. Moline Plow Co., 134 Ill. 350.

[19] Edmonston v. McLoud, 16 N. Y. 544.

missal. This is neither fraud actual nor constructive. It gives to no one a priority or preference.[20]

If the discontinuance is obtained by fraud practiced upon the creditors, and if as a result of the discontinuance the property is turned over to a third person and thus placed beyond the reach of creditors not joining in the agreement it will not be sustained as to creditors defrauded and injured thereby.[21]

Where an assignment has been discontinued by fraudulent means and a non-assenting creditor is injured thereby and files a creditor's bill against parties instrumental in perpetrating the fraud and in whose hands assets had been wrongfully transferred, he may be paid in full if the fund liable is sufficient, all other claims having been satisfied.[22]

§ 246. When Statute Places All Creditors on an Equal Footing.—Where the statute, in case of the purchase of property by the debtor and the taking of the deed to another, makes such property a trust estate for the benefit of creditors it is not within the power of one creditor to obtain priority over another with reference to property so conveyed. In such case a charge is created against the property in favor of all creditors by the

[20] Kelley v. Leith, 176 Ill. 311.

[21] Howe v. Warren, 154 Ill. 227; Terhune v. Kean, 155 Ill. 506. In American Exchange Bk. v. Walker, 164 Ill. 135, it appeared that by the operation of the discontinuance one of the creditors was paid or secured in full and that the funds in the hands of the assignee were used in buying up claims to procure assent to a discontinuance; and that the estate in the hands of the assignee was turned over to a trustee as security for money advanced to buy up claims of assenting creditors, the trustee being one of the creditors, it was held that these things were fraudulent as to non-assenting creditors. This was a creditor's bill by a non-assenting creditor to reach assets fraudulently transferred.

[22] American Exchange Bk. v. Walker, 164 Ill. 135. Under a creditor's bill which does not attack the debtor's assignment for the benefit of creditors as fraudulent, it is error to decree that the property assigned be held subject to a judgment and execution on the creditor's claims obtained after the commencement of the creditor's suit. Post v. Roach, 26 Fla. 442.

statute and priority of one over others is inconsistent with the legislative intention.[23]

§ 247. No Priority in Violation of Agreement.— While the general rule is that a creditor who reduces his claim to a judgment and files a creditors' bill to reach equitable assets of the debtor, by which property not subject to execution is reached and made available obtains a priority or right in equity to have the same first applied in payment of his judgment which is based upon the principle that a diligent creditor should be awarded for his superior diligence in discovering assets that would not otherwise have been brought to light, yet this doctrine does not extend to a case where an agreement is made by and between the debtor and plaintiffs by which the latter were facilitated in procuring judgment in order to lay the foundation for a creditors' bill for the benefit of all creditors. In such case the plaintiffs having obtained an advantage over the other creditors pursuant to the agreement cannot be permitted in a court of equity to use such advantage to the injury of other creditors.[24]

Where a chattel mortgage and an assignment are executed within a few minutes of each other the statute prohibiting preferences in assignments renders each void, where the mortgagees have notice that the debtors are heavily indebted.[25]

§ 248. Priority of One Dealing With Fraudulent Grantee. — Where credit is extended to a person on the strength of his ownership of property without no-

[23] Miner v. Lane, 87 Wis. 348. This was under a statute creating a trust in favor of creditors where property was bought by the debtor and the deed was made to another. Garfield v. Hatmaker, 15 N. Y. 475; Wood v. Robinson, 22 N. Y. 564; McCartney v. Bostwick, 32 N. Y. 53; Ocean Nat. Bk. v. Olcott, 46 N. Y. 12; Brown v. Chubb, 135 N. Y. 174.

[24] Talcott v. The Grant Wire Spring Co., 131 Ill. 248.

[25] Burnham v. Haskins, 79 Mich. 35.

tice of any claim by any one that the property had been fraudulently conveyed, and the creditor procures judgment against such fraudulent grantee before any steps are taken by the creditors of the grantor to set aside the conveyance, he is entitled to priority.[26]

[26] Applegate v. Applegate, 78 N. W. 34; —Ia.—

CHAPTER IX.

PREFERENCES.

§ 260. General rule, allowed.
261. Conditions attached.
(1) No reservations.
(2) No motive to cover up and conceal.
(3) Indebtedness bona fide.
(4) Rule as to compromise agreements.
262. When prohibited by statute.
263. Attitude of creditor preferred.
264. Preferences when valid.
(1) Where no statutory restrictions.
(2) When in good faith and in ordinary course.
(3) Where conveyance to trustees.
(4) Where valuation as a whole reasonable.
(5) Where money placed in hands of attorney.
(6) Where consideration is to pay self and others.
(7) Money loaned when.
(8) Mortgage when valid.
265. Assignments invalid as to creditors.
(1) Concealing, etc., money and property.
(2) Fictitious person or debt.
(3) Or that provides for payment of attorney's fees.
266. Preferences when invalid.
(1) Given with view of insolvency.
(2) Where property worth more than debt.
(3) Mortgage of all of debtor's property.
267. Statutory restrictions on preferences.
268. Transactions construed as assignments and void as preferential.
269. Effect of stipulations in assignment as to preferences.

Section **260. General Rule.**—The general rule regarding preferences, where there is no statutory enactment to the contrary, is that a creditor may make such preference in the payment or security of his creditors, as to him shall seem proper. The reason for this rule lies in the fact that the debtor is the absolute

owner of his property, and this includes the right of disposition thereof at his discretion. Any other rule would be inconsistent with the dominion which every man, in all civilized countries, is recognized as having in property of his acquirement by legal methods. A preference has been defined to be a payment to one creditor which will, or possibly may, give him an advantage over others. It is not confined, however, to payments, but may include mortgages, judgments or other means of securing an indebtedness. Most bankrupt and insolvent laws prohibit the making of preferences by the debtor within certain specified limits of the adjudication, or commencement of proceedings.[1]

§ **261. Conditions Attached to General Rule.**—To the application of the rule there are certain conditions that must be understood in order to render the preferential acts valid as to other creditors. (1) There must be no reservations, either express or implied, in favor of the debtor. All secret trusts in behalf or for his beneficial use that are embodied in the transaction, whether it be a payment, conveyance, transfer or mortgage, render the preference void. The sole object must be the payment or securing of the debt.[2]

(2) There must be connected with the transaction no motive or purpose to assist the debtor in covering up and concealing his property from other creditors, even

[1] The right of a person to dispose of his property in good faith to a bona fide creditor in payment of an honest debt is based upon the principle that every man has an absolute right to dispose of his own in his own way. Tompkins v. Hunter, 149 N. Y. 117; Citizens' Bank v. Williams, 128 N. Y. 77; Reed v. McIntyre, 98 U. S. 507; Brashear v. West, 7 Pet. 608. Courts will not lay an embargo upon free alienation for honest purposes even where the results may be detrimental to other persons. The right of a debtor to pay one creditor in preference to another, or to turn out property in satisfaction of, or to create a lien upon it for the security of a particular debt in preference to and to the exclusion of other liabilities always existed at common law. Farwell v. Nilsson, 133 Ill. 45.

[2] Campbell v. Colorado Coal & Iron Co., 9 Col. 60.

where the *bona fides* of the indebtedness is unquestioned.[3]

(3) The creditor whose claim is preferred, either paid or secured, must be a *bona fide* creditor having a valid and subsisting indebtedness. And in such case it is immaterial that part of the scheme may be valid, as where part of the indebtedness is valid and part fictitious. The invalid and obnoxious part carries down with it the whole structure.[4]

(4) Where there is a compromise agreement to pay all creditors a *pro rata* share of their indebtedness, there must be no secret agreement and understanding to pay or secure some a greater amount.[5]

A preference made by a debtor to his creditor may be

[3] David v. Birchard, 53 Wis. 492; Pilling v. Otis, 13 Wis. 495; Smith v. Hardy, 36 Wis. 417. If a debtor makes a sale of his personal property to one of his creditors with an agreement that out of the proceeds of sale the creditor shall retain enough to pay his own debt and then pay other creditors, and then pay the balance to the debtor and this sale is made to prevent other creditors from attaching the property, it is actual fraud and vitiates the sale as to other creditors. Menton v. Adams, 49 Cal. 620. Where one of the purposes of a mortgagor and mortgagee is to deter the mortgagor's creditors from attaching the mortgaged property the mortgage is wholly void as to those creditors though the principal purpose of the parties is to secure a bona fide debt. Crowninshield v. Kittridge, 7 Metc. 520; Thomas v. Goodwin, 12 Mass. 140; Hutchins v. Sprague, 4 N. H. 469. If the purpose of the creditor in obtaining a judgment is not to collect his debt but to help the debtor cover up his property his judgment will be set aside though the debt be bona fide. Smith v. Schwed, 9 Fed. Rep. 483.

[4] Crowninshield v. Kittridge, 7 Metc. 520; Davis v. Leopold, 87 N. Y. 620; Union Nat. Bk., etc. v. Warner, 12 Hun, 306; Shaw v. Hanley, 71 N. Y. 319; Savage v. Murphy, 34 N. Y. 508; Boyd v. Dunlap, 1 Johns. Ch. 478.

[5] Hanover Nat. Bk. v. Blake, 142 N. Y. 404. In this case the composition agreement was upheld but the secret agreement was held void. Cf. Leicester v. Rose, 4 East. 372, 381; Russell v. Rogers, 10 Wend. 474, 479; Howden v. Haigh, 11 Ad. & Ellis 1033; Knight v. Hunt, 5 Bing. 432; Mallalieu v. Hodgson, 16 Ad. & Ellis, N. S. 689; Breck v. Cole, 4 Sandf. 79; Fellows v. Stevens, 24 Wend. 294; Bliss v. Matteson, 45 N. Y. 22; Harloe v. Foster, 53 N. Y. 385; White v. Kuntz, 107 N. Y. 518; Solinger v. Earle, 82 N. Y. 393. In the case of Hanover Nat. Bk. v. Blake, supra, there is a review of English and New York cases and the conclusion arrived at, though contrary to the trend of English authorities, is that the composition agreement and the preferential agreement are separate

consummated in various ways, provided always that the motive is free from fraud. Thus it may be by payment in money or property; or by a lien given as security on realty or personalty; or by a judgment; or a note or other evidence of indebtedness.

§ **262. Preferences—Prohibited by Statute.**—In opposition to the established principles of the common law the legislative policy as expressed in many of the states of this country, particularly in reference to vol-

and distinct and while the latter falls by reason of the fraud the former may stand. In Estes v. Gunter, 122 U. S. 450, it is held that a payment by an insolvent debtor of a debt due to his wife in advance and in contemplation of an assignment for the benefit of creditors does not invalidate a subsequent assignment. Nor does the taking of supplies from the store of the debtor for family use. In Bean v. Patterson, 122 U. S. 496, it was held that a conveyance by a husband when insolvent to a trustee for the benefit of his wife if in good faith and to secure a bona fide debt is valid and binding as if made for a similar purpose to a third person's benefit, though it would not be if made to secure the wife against future necessities. In Solinger v. Earle, 82 N. Y. 393, it was held that a note given by a third person in no manner liable for the indebtedness to a creditor as an inducement to secure a composition agreement was fraudulent, but having been assigned before maturity to a bona fide holder and paid by the maker he, the maker, could not recover the money for the reason that he was par delictum in the transaction with the defendants. In Smith v. Bromley, 2 Douglas 696; Smith v. Cuff, 6 M. & S. 160; Atkinson v. Denby, 7 H. & N. 934, countenance is given to the doctrine that a party to an illegal contract cannot recover back money paid upon it does not apply to a case where the debtor, or one in his behalf, has paid money in pursuance of a secret agreement exacted by the debtor in fraud of a composition. The exaction by the creditor is called "extortion" by Lord Mansfield, and a "species of duress and oppression," by Lord Kenyon, the parties not being in pari delicto, and "oppression on one side and submission on the other," by Lord Ellenborough. This doctrine is questioned, however, by Andrews, J., in Solinger v. Earle, 82 N. Y. 393, in the following language: "It is somewhat difficult to understand how a debtor who simply pays his debt in full can be considered the victim of oppression or extortion because such payment is exacted by the creditor as a condition of his signing a compromise, or to see how both the debtor and creditor are not in pari delicto." Sharp v. Teese, 9 N. J. L. 352; Case v. Gerrish, 15 Pick. 49. In Smith v. Craft, 17 Fed. Rep. 705, it was held that credit procured upon a promise of preference is not fraudulent except when fraud was intended, or the circumstances within the knowledge of the creditor were such that he must have known that injury to others would follow in all probability.

untary assignments for the benefit of creditors, is to prohibit preferences by the debtor. Sometimes preferences are prohibited when embodied in an assignment, and sometimes the prohibition relates to preferences made prior to the assignment, but in anticipation thereof. It is not within the scope of this work to consider the several statutory enactments to be found upon this subject or the decisions that are purely of a constructive nature based thereon, except in so far as they may be illustrative of the general topic, or otherwise of general interest.

Even where preferences are prohibited by the statute it is often a perplexing question to determine what knowledge on the part of the creditor of the debtor's purpose, or of his insolvency, or participation in his preferential act will render the preference void as to other creditors. The general purpose of this class of legislation is to secure for all creditors equality in the distribution of the debtor's assets, and with this end in view the judicial policy should, as far as possible, conform to and carry out the legislative intent, and particularly so when by so doing well established principles of equity are recognized and enforced. So far as the debtor himself is concerned, if the preferential payment or security is made in anticipation of following it with a general assignment the preference will be void as to other creditors, who take reasonable and proper methods of attacking its validity.

§ **263. Attitude of Creditor Preferred.**—But the validity or invalidity of the preference is to a large extent determined by the attitude of the preferential creditor toward the transaction. There can in no case arise an imputation of fraud where the purpose of the creditor as expressed by the act alone consists in the collection of a valid and subsisting indebtedness due

him from the debtor. Lack of knowledge on the part of the creditor of insolvency of the debtor, and of any intended assignment are also to be considered as not invalidating the assignment, but rather as elements establishing the *bona fides* of the act. Because the statute under certain circumstances prohibits preferential payments is the creditor to whom an honest debt is due before accepting payment to put the debtor under a rigid examination as to his financial responsibility and his purpose in making payment or in securing what is due? Such would not be a reasonable requirement, nor be dictated by any system of sound legal ethics, or business propriety.[6]

It is an interesting question in this connection as to how far the creditor may go in the way of moral coercion in procuring from his debtor payment or security of his indebtedness, which is not infrequently accomplished by means of threats of suits, etc.

§ **264. Preferences When Valid.**—Without expectation of exhausting the subject, and with the hope only of illustrating the general subject of valid and invalid preferences, it may be stated that preferential payments made, or security given, by the debtor to favored creditors will be sustained when: (1) There are no statutory restrictions prohibiting and where the common law rules are in force and the transaction is *bona fide*.[7]

(2) When the preference is made in good faith and

[6] The rule established in New York upon this subject is that even where a preference—in excess of a certain amount—is prohibited, if the debt is bona fide and the preferred creditor is ignorant of any intention on the part of the debtor to make an assignment, the preference will be upheld. Maass v. Falk, 146 N. Y. 34; Manning v. Beck, 129 N. Y. 1; Bergen v. Varrelmann, 127 N. Y. 281.

[7] Juilliard v. May, 130 Ill. 87; Glover v. Lee, 140 Ill. 102; Huntley v. Kingman, 152 U. S. 527; Jewell v. Knight, 123 U. S. 426; Peoples, etc., Bk. v. Bates, 120 U. S. 556; Sawyer v. Levy, 162 Mass. 190; Giddings v. Sears, 115 Mass. 505; Leavitt v. Blatchford, 17 N. Y. 521; Talcott v. Harder,

in the ordinary and usual course of business without purpose or tendency to injure others.[8]

(3) Where a conveyance of land is made to trustees for the benefit of certain creditors named to the exclusion of others.[9]

(4) Where the valuation of the whole property is reasonable though some of it may be valued too high and some too low.[10]

(5) Where money is placed in the hands of the debtor's attorney, who is also a creditor, to pay a certain per cent. of designated claims, the balance to be applied on indebtedness due the attorney.[11]

(6) Where the consideration of a conveyance is the satisfaction of a pre-existing indebtedness to the grantee and the agreement on his part to pay other indebtedness to other parties, which is done.[12]

(7) Money loaned by father to his son to enable him

119 N. Y. 536; Murphy v. Briggs, 89 N. Y. 446; Cutter v. Pollock, 4 N. Dak. 205; Alberger v. Nat. Bk. 123 Mo. 313; Schroeder v. Bobbitt, 108 Mo. 289; French v. Motley, 63 Me. 326; Warner v. Littlefield, 89 Mich. 329; Warner, etc., Co. v. Jennings, 58 Conn. 74; Low v. Wortman, 44 N. J. Eq. 193; Keen v. Kleckner, 42 Pa. St. 529. The cases sustaining the text are very numerous but the above are illustrative and sufficient. The Ill. Act of 1877, prohibiting preferences relates only to preferences in an assignment. Farwell v. Nilsson, 133 Ill. 45. It does not apply to judgment notes given by a failing debtor for the purpose of a preference where there is no assignment. Do.

[8] Stock-Growers Bank v. Newton, 13 Colo. 245; Havens v. Exstein, (Sup. Ct.) 31 N. Y. S. R. 43, 9 N. Y. Supp. 605; Menzesheimer v. Kennedy, 75 Wis. 411; Warner Glove Co. v. Jennings, 58 Conn. 74; Stevens v. Breen, 75 Wis. 595.

[9] Hays v. Hostetter, 125 Ind. 60.

[10] Chipman v. Stern, 89 Ala. 207.

[11] Warner Glove Co. v. Jennings, 58 Conn. 74.

[12] Saunderson v. Broadwell, 82 Cal. 132. In this case it was held that a pre-existing indebtedness constitutes a valuable consideration. Jamison v. King, 50 Cal. 132; Schluter v. Harvey, 65 Cal. 158. Also a promise to pay the debt of the grantor to a third person. Gladwin v. Garrison, 13 Cal. 330. A conveyance to satisfy a debt due the grantee and also an assumption on his part to pay another creditor does not create a trust in favor of creditors generally. Dana v. Stanford, 10 Cal. 269; Lawrence v. Neff, 41 Cal. 566; Wood v. Franks, 67 Cal. 32.

to enter a firm and money loaned to the firm on account of son.[13]

(8) A mortgage to secure a *bona fide* debt is not rendered invalid if otherwise taken in good faith by the mortgagee, after possession taken under the mortgage, permitting the mortgagor to remain in possession and manage the business.[14]

§ **265. Assignments Invalid as to Creditors.**— The general principles regarding assignments which are invalid by reason of their being fraudulent as to creditors are, as a rule, the same as applied to fraudulent conveyances and are elsewhere considered. There are, however, certain assignments that are rendered invalid by reason of some provision therein or act in connection therewith that is of a preferential nature and character which are proper to be considered in this connection:

(1) Where the debtor omits from his assignment money or property which in anticipation of making an assignment has been given to, or for the purpose of concealing has been placed in the custody of, another.[15]

[13] Rosenfield v. Goldsmith (Ky.), 11 Ky. L. Rep. 662.

[14] Decker v. Wilson, 45 N. J. Eq. 772.

[15] Where an assignment purports to transfer all the property of the debtor, an intentional omission from the schedule of property assigned of items of valuable property is sufficient to establish fraud, but an omission of worthless items is not. Shultz v. Hoagland, 85 N. Y. 464; Coursey v. Morton, 132 N. Y. 556; Talcott v. Hess, 31 Hun, 282; Iselin v. Henlein, 16 Abb. (N. C.) 73; Chambers v. Smith, 38 N. Y. St. Rep. 213. "Every party must be deemed to have intended the natural and inevitable consequences of his acts, and where his acts are voluntary and necessarily operate to defraud others he must be deemed to have intended the fraud." Coursey v. Morton, supra; Coleman v. Burr, 93 N. Y. 17; Cunningham v. Freeborn, 11 Wend. 240; Ford v. Williams, 24 N. Y. 359; Edgell v. Hart, 9 N. Y. 213; Wilson v. Robertson, 21 N. Y. 587. In Coursey v. Morton, 132 N. Y. 556, it is said that the intentional withholding and secreting by the assignor of assets of a substantial value is fraudulent as to creditors and renders the assignment void. Shultz v. Hoagland, 85 N. Y. 464; Talcott v. Hess, 31 Hun, 282; Iselin v. Henlein, 16 Abb. N. C. 73; Chambers v. Smith, 38 N. Y. S. R. 213. An assignment must be in good faith. It must not be for the

(2) Where preferences are allowed if a preference is made to a fictitious person or for a fictitious or simulated debt.[16]

(3) Or that provides for the payment of attorney's fees for services to be rendered in the future; or for the payment of debts to grow due if such debts are not in existence, but to be thereafter created.[17]

§ **266. Preferences—When Invalid.**—While not in all cases uniform, the general trend of authorities will be found as invalidating preferences made by the debtor to favored creditors.

(1) Where the preference is given with a fraudulent purpose or with a view of taking the benefit of insolvent laws.[18]

(2) Where property is taken in payment of a debt of greater value than the debt and with knowledge of the debtor's insolvency, and even if the excess is used in the payment of other creditors if the effect is to hinder and delay creditors it will be invalid.[19]

(3) A mortgage of all of the debtor's property which

purpose of delaying creditors and thereby giving the assignor an advantage. Phelps v. Curts, 80 Ill. 109. Creditors cannot be required to file releases of their claims as a condition of participating in the benefits of an assignment made for the benefit of all creditors. Re Fuller, 42 Minn. 22.

[16] Frank v. Robinson, 96 N. C. 28. In Mississippi a general assignment for the benefit of creditors which provides for the payment of fictitious or simulated debts is fraudulent and void. Bickham v. Lake, 51 Fed. Rep. 892.

[17] Sheldon v. Dodge, 4 Denio 217; Grover v. Wakeman, 11 Wend. 187; Barnum v. Hempstead, 7 Paige 568; Brainerd v. Dunning, 30 N. Y. 211. A mortgage made by an insolvent in good faith, to secure reasonable compensation to his attorney for services in obtaining an insolvency discharge, is not void as against creditors. Re Parsons, 150 Mass. 343.

[18] Zahn v. Smith (Md.) Dec. 18, 1889 (not reported) 71 Md. xiv.

[19] Willis v. Yates, 12 S. W. 232; Gallagher v. Goldfrank, 75 Tex. 562. In this case the mortgage was for more property in value than the debt, and in addition it appeared that the mortgagee was authorized to take possession and sell the property in due course of trade. But see Central Nat. Bk. v. Seligman, 138 N. Y. 435, where it is held that the assignment is not invalidated, but only the excess.

in fact amounts to an assignment, where the object is to prefer certain creditors, leaving out others.[20]

§ 267. Statutory Restrictions on Preferences.— The statutes of the several states in this country are so varied and inharmonious that it is not deemed of sufficient general interest to point out the distinguishing features thereof. A statute prohibiting preferences applies only to such preferences as are made within the state, and is not applicable to foreign preferences.[21]

[20] Atkinson v. Weidner, 79 Mich. 575.

[21] Juilliard v. May, 130 Ill. 87. Generally speaking where a statute prohibiting preferences is part of the law regulating voluntary assignments the prohibition is not to be extended beyond that. Stein v. Levy, 29 N. Y. S. R. 87. But see Straw v. Jenks, 6 Dak. 414, where it is held that the object of Sec. 4660 Dak. Comp. Laws, is to prevent preferences by any form of instrument. The provisions of the United States Bankrupt Act in force July 1, 1898, relative to preferences are as follows: Sec. 60. Preferred Creditors.— a. A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. b. If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. c. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him. d. If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate. Sec. 5128 of the bankrupt act of 1867 relating to preferences provided that if any person, being insolvent or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference

Where preferences are prohibited by law and a lien in favor of a creditor has been obtained by the confession of a judgment which is attacked as preferential and therefore prohibited, it must appear (1) that at the time the judgment was entered, execution issued and levy made, the debtor had made up his mind to make an assignment for the benefit of creditors, and (2) that he had some agency in bringing about the entry of the judgment and the seizure of the property on execution. And when the lien of the execution is apparently superior to the assignment the burden of defeating the lien will rest on the party attacking, on both of the above propositions.[22]

§ 268. Transactions Construed as Assignments as Void as Preferential.—It has been held that a judgment by confession by an insolvent debtor to some of his creditors upon which execution issued forthwith by consent, followed by an immediate levy upon all of the property of the debtor, constitutes an assignment

to any creditor or person having a claim against him, or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered, or seized on execution or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, etc., having reasonable cause to believe such person is insolvent, and knowing such payment, etc., is made in fraud of the act shall be void.

[22] Hanford v. Prouty, 133 Ill. 339. A corporation creditor cannot maintain an action for his own benefit to set aside a transfer of property by the corporation with the intent of giving a preference in violation of the New York corporation law, Sec. 48. Koechl v. Leibinger & O. Brew. Co., 52 N. Y. Supp. 982, 24 Misc. 298. And so it was held in South Carolina that there was no preference to the creditor who brings the bill, although the prayer of his complaint is limited to himself and does not state that it is in behalf of creditors who will contribute to the expense. Curlee v. Rembert, 37 S. C. 214. Section 6344 of the Rev. Stat. of Ohio, establishes a statutory rule for disposition of property fraudulently conveyed, and substitutes a ratable distribution among all creditors as under assignments. England v. Russell, 71 Fed. Rep. 818. A debtor has a right under California Code, Sec. 3432, to prefer creditors by executing an absolute, and not a colorable, conveyance of land to a creditor for a valuable consideration. Saun-

within the purview of the statute prohibiting preferences.[23]

But judgment notes taken at a time when the debtor did not contemplate making an assignment upon which judgment was afterward rendered does not render the judgment void as contravening Ill. Rev. St. 1889, ch. 10a, § 13, prohibiting preferences.[24]

Where several judgments are confessed by an insolvent debtor on the same day which are levied on all the debtor's property by his consent and by this means all his property is transferred to some of the creditors, it constitutes one transaction and is void as being preferential.[25]

A secret agreement to pay a creditor in full after he has received his *pro rata* share under the assign-

derson v. Broadwell, 82 Cal. 132. Under Virginia Code, Secs. 2458, 2460, 2874, creditors seeking to avoid an assignment by a special partnership share pro rata. Rothchild v. Hoge, 43 Fed. Rep. 97.

[23] Putney v. Freisleben, 32 S. C. 492. Where certain debtors being aware of their hopeless insolvency, and having determined to make a disposition of their estate among their creditors, made preferential payments, and conveyances of real estate to various relatives in satisfaction of alleged indebtedness, and then without solicitation made, delivered a series of judgment notes for the purpose of preferring certain other creditors and lastly made a deed of assignment for the benefit of creditors generally, in form free from legal defect, but was not filed until the favored creditors had time to take judgments and take out executions before the assignee could take possession, it was held that such preferences were fraudulent and would be set aside at the suit of the other creditors. Preston v. Spaulding, 120 Ill. 208. And so in Michigan an instrument, the first part of which is in the form of a chattel mortgage, but which puts the entire assets of a corporation, legal and equitable, into the hands of a trustee for sale and distribution to a part only of its creditors, is invalid, under Michigan statutes, as a general assignment with illegal preferences. Kendell v. Bishop, 76 Mich. 634. But in Texas a limited insolvent partnership, or when it contemplates insolvency, may make an assignment for the benefit only of such creditors as will accept their proportional share of the proceeds of the effects assigned, and discharge their claims. Tracy v. Tuffly, 134 U. S. 206.

[24] Home Nat. Bk. v. Sanchez, 131 Ill. 330; Hanford v. First Nat. Bk., 126 Ill. 584; Preston v. Spaulding, 120 Ill. 208.

[25] Putney v. Freisleben, 32 S. C. 492.

ment in consideration that he would accept a statutory assignment is void as to the other creditors.[26]

§ 269. Effect of Stipulations in Assignment as to Preference.—In a general assignment for creditors there are some stipulations inserted therein which render it void, but it has been held that a stipulation for a release based on a condition of preference does not do so.[27] Nor does the omission of directions to the assignee to notify the creditors of the condition upon which they may be preferred.[28]

In New York it seems to be the law that the sale of property to a creditor in payment of a debt, and taken by the latter solely for the purpose of such payment, cannot be defeated by another creditor by reason of the fraudulent intent on the part of the debtor, although the purchaser was cognizant of such intent of the vendor.[29]

[26] Dansby v. Freiberg, 76 Tex. 463.

[27] Wolf v. Gray, 53 Ark. 75.

[28] Wolf v. Gray, 53 Ark. 75. In Knower v. Central Nat. Bk., etc., 124 N. Y. 552, it was held that the rights of a preferred creditor are not prejudiced by the fact that after the making of an assignment and with knowledge of the fraudulent intent on the part of the assignor he obtained judgment by confession for the firm's debt, issued execution thereon and by his directions the sheriff allowed the assignee to sell the assigned property and returns the execution unsatisfied. It further appeared in this case that the assignee paid the preferred creditor pursuant to the terms of the assignment, and that subsequently the assignment was set aside as void as to creditors. The payment was held valid, however, it appearing that the debt was bona fide. Cf. Howe v. Henriquez, 13 Wend. 240.

[29] Knower v. Central Nat. Bk., 124 N. Y. 552, 560; Dudley v. Danforth, 61 N. Y. 626.

CHAPTER X.

TRUST PROPERTY.

§ 280. Rights of creditors in relation to, general.
281. Statutory provisions.
282. Public policy.
283. When neither principal nor income liable.
284. General rule. Trust property not reached.
285. Contrary rule.
286. Restrictions on estates in fee.
287. Trust created by the debtor.
288. Trusts subject to rights of creditors.
(a) Property conveyed to another to pay debts.
(b) Property conveyed as security to creditor—surplus.
(c) Property purchased by heirs when liable.
(d) If subject to alienation may be reached.
(e) Life estate, when.
(f) Surplus income express trust.
(g) Annuity, when.
(h) Resulting trust.
(i) Pure trust.
(j) Alimony due a divorced wife.
(k) Devisee's share in equitable remainder.
(l) Money in the hands of an executor subject to demand.
289. Trust property converted may be followed.
290. Equity jurisdiction of estate in probate.
291. Equity jurisdiction of estate in foreign state.

Section **280. Rights of Creditors in Relation to Trust Property—General.**—Concerning the rights and equities of creditors in relation to trust property or property held in trust for the benefit of the debtor there is not the utmost harmony in the decisions of our courts. The placing of the title to property, real or personal, by deed or will, in the name of a trustee for the beneficial use and enjoyment of another, if free from any fraudulent purpose, may be, and quite often

is, highly commendable as between the parties. The benefactions of the donor so far as the creditors of the donee are concerned are entirely subject to his will and direction, and are limited only in certain respects by public policy. The effects of this method of alienation, however, places the beneficiary in a position unique in its nature when viewed from the ordinary standpoint of the relationship of debtor and creditor. He may, in most cases, enjoy all the benefits and advantages growing out of the ownership of property without being subjected to the remedies the law provides against ordinary debtors. He is shielded and protected in the use and enjoyment of property however meritorious the claims of his creditors may be.

§ **281. Statutory Provisions.**—To avoid the effects of placing trust property beyond the reach of creditors the statute in New York has provided that the income from trust property beyond what may be necessary for the education and support of the *cestui que trust* shall be liable in equity for debts. In New Jersey, by statute, the income beyond a specified sum may be reached by creditors, and in that state where the *cestui que trust* has contributed money towards the trust property, equity will grant relief to the extent of the contribution. In Michigan rents and profits beyond what are necessary for the support of the *cestui que trust* are liable to the claims of creditors.[1]

[1] Under the statutes of Michigan the rents and profits of a trust beyond what is necessary to support the cestui que trust are liable to the claims of creditors, in the same manner as other personal property which cannot be reached by execution; and under said statutes, so construed, the income of a trust fund, payable to a designated beneficiary, is exempt from the payment of his debts only so far as the same is necessary for his suitable support. Spring v. Randall, 107 Mich. 103. Comp. L. Secs. 4120, 4122, sustaining trusts in land in favor of creditors where the debtor pays the entire consideration and the grant is made to another, covers a case where, pending suit, the judgment debtor completed his payments on a contract of purchase and fraud-

§ 282. **Public Policy.**—Independent of public policy, as expressed in statutory enactments, the courts have established certain principles in relation to this subject, not entirely harmonious, it is true, but generally recognized and enforced. If the debtor himself is instrumental in procuring the property to be placed in trust for the benefit of himself and his family it will not be shielded from the reach of creditors. If, however, the donor has the absolute dominion over the property he may properly make such disposition thereof as his judgment may dictate, and it will be beyond the reach of creditors, and the latter are in no manner defrauded thereby.[2]

ulently caused the land to be deeded to another without consideration. Fairbairn v. Middlemiss, 47 Mich. 372. The provision of a statute that an annuity, out of the profits of a trust estate, for the support of the annuitant, may be taken by the creditors of such annuitant if he is able to support himself by his labor, enables the creditors to take only the surplus after supporting the annuitant. Clute v. Bool, 8 Paige (N. Y.) 83. Where a person is entitled, under a will, to an annuity for life, payable semi-annually, out of the income of real and personal estate in the hands of trustees, his interest in such annuity, beyond what is necessary for the support of himself and his family, may, under the provisions of the Revised Statutes of New York, be reached by a creditor's bill, and applied to the payment of his debts. Sillick v. Mason, 2 Barb. (N. Y.) Ch. 79. In Williams v. Thorn, 70 N. Y. 270, the judgment debtor was a beneficiary of a trust under which the trustees were required to receive and pay over to him the income of the trust estate and it was held that the action brought by a judgment creditor to reach the surplus income over what was necessary for the suitable maintenance of the cestui que trust and those dependent on him would be sustained, and that this right of action exists whether the trust estate is either real or personal and future accumulations could be provided for. The cases relied upon by the court as sustaining the position taken are: Rider v. Mason, 4 Sandf. Ch. 351; Sillick v. Mason, 2 Barb. Ch. 79; Bramhall v. Ferris, 14 N. Y. 41; Scott v. Nevius, 6 Duer 672; Graff v. Bonnett, 31 N. Y. 9, and see also Tolles v. Wood, 99 N. Y. 616; Wetmore v. Wetmore, 149 N. Y. 520, 529.

[2] As a general rule it is contrary to public policy to permit a person to have the absolute and uncontrolled ownership of property and be able at the same time to keep it from his honest creditors. Hardenburgh v. Blair, 30 N. J. Eq. 42; Hallett v. Thompson, 5 Paige Ch. 583. In this case is to be found a valuable citation and analysis of English and American authorities upon this subject down to 1878, and also a valuable note upon this and cognate sub-

§ 283. When Neither Principal nor Income Liable.

—In determining whether a trust fund may be reached

jects. In England the law appears to be as laid down in Williams v. Thorn, supra, see: Brandon v. Robinson, 18 Ves. 429; Green v. Spicer, 1 R. & M. 395; Rochford v. Hackman, 9 Hare 475; Trappes v. Meredith, L. R. 9 Eq. 229; Snowden v. Dales, 6 Sim. 524; Rippon v. Norton, 2 Beav. 63. To the same effect are Tillinghast v. Bradford, 5 R. I. 205; Heath v. Bishop, 4 Rich. Eq. 46; Dick v. Pitchford, 1 Dev. & Bat. Eq. 480; Mebane v. Mebane, 4 Ired. Eq. 131; Smith v. Moore, 37 Ala. 330; McIlvain v. Smith, 42 Mo. 45. In Nichols v. Eaton, 91 U. S. 716, it was held that where it appeared by the record of a will that the devisee held either a life estate or the income, dividends or rents of real or personal property payable to him alone to the exclusion of creditors the creditors have no right to look to that estate or the income, dividends or rents as a fund to which they can resort to enforce payment of a claim against the devisee; that in giving the latter credit they were not misled nor defrauded. The court say: "We do not see any reason in the recognized nature and tenure of property and its transfer by will, why a testator, who gives without any pecuniary return, who gets nothing of property value from the donee, may not attach to that gift the incident of continued use, of uninterrupted benefit of the gift during the life of the donee. Why a parent, or one who loves another, and wishes to use his own property in securing the object of his affection, as far as property can do it, from the ills of life, the vicissitudes of fortune, and even his own improvidence, or incapacity for self protection, should not be permitted to do so, is not readily perceived." The cases relied on in support of this doctrine are: Fisher v. Taylor, 2 Rawle 33; Holdship v. Patterson, 7 Watts 547; Shankland's Appeal, 47 Penn. St. 113; Ashurst v. Given, 5 W. & S. 323; Brown v. Williamson, 36 Penn. St. 338; Still v. Spear, 45 Penn. St. 168; Leavitt v. Beirne, 21 Conn. 1; Nickell v. Hundley, 10 Gratt. 336; Pope's Exrs. v. Elliott, 8 B. Mon. 56; Campbell v. Foster, 35 N. Y. 361. And see Jourolmon v. Massengill, 86 Tenn. 81; Bull v. Bank, 90 Ky. 452; Halstead v. Westervelt, 41 N. J. Eq. 100; Board of Freeholders v. Henry, 41 N. J. Eq. 388; Lippincott v. Evens, 8 Stew. Eq. 553; Parker v. Harrison, 42 N. Y. Supr. Ct. 150. In Broadway Nat. Bk. v. Adams, 133 Mass. 170, the doctrine of Nichols v. Eaton, supra, was adopted and is stated to be sustained by the following cases: Braman v. Stiles, 2 Pick. 460; Perkins v. Hays, 3 Gray 405; Russell v. Grinnell, 105 Mass. 425; Hall v. Williams, 126 Mass. 344; Sparhawk v. Cloon, 125 Mass. 263. This question first came before the supreme court of Illinois in Steib v. Whitehead, 111 Ill. 247, where the doctrine of Nichols v. Eaton, supra, was adopted in that state. And see also Springer v. Savage, 143 Ill. 301; Hallett v. Thompson, 5 Paige 583. Upon this subject of a privileged class thus created Professor Gray has forcibly remarked that they "form a privileged class who could indulge in every speculation, could practice every fraud, and yet, provided they kept on the safe side of the criminal law, could roll in wealth. They would be an aristocracy, though certainly the most contemptible aristoc-

and applied to the satisfaction of debts the question depends largely on the nature of the trust. Thus in case of a devise to trustees to be paid over to a legatee where nothing is to be done but make the payment, it may be reached by a judgment creditor, but if the trustees are to invest the fund and pay to the legatee during his life the interest and income thereof at such times, in such manner and in such amounts as the trustees shall deem prudent, neither the principal nor the interest which has been kept back for prudential reasons can be reached by a court of chancery on the application of a creditor of the legatee. The reason of this doctrine, thus applied, is in the fact that neither the legal title nor the right of possession is in the legatee until such time as, in the discretion of the trustee, the trust is executed.[3]

Where a trustee in a will holds money to be paid over on demand a court of equity may properly appropriate the trust estate to the payment of a judgment creditor of the beneficiary.[4]

§ 284. General Rule—Trust Property Not Reached. —While not free from criticism based upon grounds of public policy, the weight of authority in this country undoubtedly is that, as to creditors, property may be conveyed or devised by the owner to a trustee for the benefit of debtor, and thus be placed beyond his power of alienation and beyond the reach of his creditors. This rule is based upon the doctrine of *jus disponendi* applicable to the ownership and disposition of property generally, where no impediments exist as to the competency of the donor and there is no contravention of publicy policy.[5]

racy with which a country was ever cursed." Restraints on alienation, Sec. 262.

[3] Hardenburgh v. Blair, 30 N. J. Eq. 645.

[4] Wells v. Ely, 11 N. J. Eq. 172; Lynch v. Utica Ins. Co., 18 Wend. 236.

[5] Nichols v. Eaton, 91 U. S. 716; Hyde v. Woods, 94 U.

§ 285. Contrary Rule—Trust Property May be Reached.—The contrary doctrine that trust property held for the benefit of the debtor is subject to the payment of his debts in a proper proceeding instituted by his creditors is maintained in other states with sound argument based on public policy, and the inequity of permitting a debtor to be the beneficial owner of property and be at the same time absolutely shielded against the demands of his creditors.[6]

S. 523; Maynard v. Cleaves, 149 Mass. 307; Broadway Nat. Bk. v. Adams, 133 Mass. 170; Claflin v. Claflin, 149 Mass. 19; Billings v. Marsh, 153 Mass. 311; Wemyss v. White, 159 Mass. 484; Smith v. Towers, 69 Md. 77; Wanner v Snyder, 177 Pa. St. 208; Steib v. Whitehead, 111 Ill. 247; Springer v. Savage, 143 Ill. 301; Martin v. Davis, 82 Ind. 38; Thompson v. Murphy, 10 Ind. App. 464; Barnes v. Dow, 59 Vt. 530; Garland v. Garland, 87 Va. 758; Partridge v. Cavender, 96 Mo. 452; Jarboe v. Hey, 122 Mo. 341; Roberts v. Stevens, 84 Me. 325; Jourolmon v. Massengill, 86 Tenn. 81; Moses v. Micou, 79 Ala. 564; Leigh v. Harrison, 69 Miss. 923. The doctrine of the text is based upon the principle of jus disponendi, by which the owner of property has a right to dispose of it absolutely or conditionally, and subject to such restrictions as he may see proper to throw around it. The grant or device by no possibility can be deemed fraudulent as to creditors when the debtors had nothing whatever to do in the matter. And see also the following: Tolland Co. Ins. Co. v. Underwood, 50 Conn. 493; Shankland's Appeal, 47 Pa. St. 113; Rife v. Geyer, 59 Pa. St. 393; Pope's Exrs. v. Elliott, 8 B. Mon. 56; Holdship v. Patterson, 7 Watts. 547; White v. White, 30 Vt. 338; Monroe v. Trenholm, 112 N. C. 634; Gray v. Corbit, 4 Del. Ch. 135. The interest of a beneficiary in a trust created by a person other than the debtor cannot be reached. Campbell v. Foster, 35 N. Y. 361. The general rule is that property held in trust for the debtor may be reached to satisfy his debts, unless for debtor's support. Graff v. Bonnett, 31 N. Y. 9. The surplus may be reached after the support has been expended. Williams v. Thorn, 70 N. Y. 270. If a cestui que trust has no power to control, alienate, or dispose of his interest in the trust property, it cannot be reached by creditor's bill. Degraw v. Clason, 11 Paige (N. Y.), 136. If he has such power it may be reached. Id. An annuity derived from a fund held in trust for a debtor, but created by some other person, cannot be reached by creditors. Frazier v. Barnum, 19 N. J. Eq. 316. Where a father willed certain personal property, in trust, to pay, out of the profits, an annuity for the support of his son, it was held that the annuity was inalienable, and could not be reached, in anticipation, by creditors. Clute v. Bool, 8 Paige (N. Y.), 83.

[6] Bailie v. McWhorter, 56 Ga. 183; Williams v. Thorn, 70 N. Y. 270 (see statute); Hobbs v. Smith, 15 Ohio St. 419; Tillinghast v. Bradford, 5 R. I. 205; Ernst v. Shinkle, 95 Ky. 608; Knefler v. Shreve, 78 Ky. 297; Lamberton v. Pereles, 87 Wis. 449; Heath v. Bishop, 4 Rich. Eq. 46;

In the consideration of this question it is important to bear in mind that the fundamental basis of all equitable proceedings of the nature we are now considering is in the fact that the debtor by some act or deed has perpetrated a fraud in fact or in law upon his creditors against which equity will grant relief. Whereas, in relation to trust property, the grant or conveyance of which is not of his procurement, the debtor is in a state of absolute passiveness. He does nothing overtly or by implication. With the motives of the donor or grantor creditors are not concerned. The law of *jus disponendi* shields him from any imputations of wrongdoing.

It would be a fruitless and presumptuous effort to undertake to reconcile the conflicting decisions upon this subject. To those courts which usually base this equitable remedy upon some lien or legal right ineffectual in its enforcement through ordinary legal channels are to

Lindsay v. Harrison, 8 Ark. 302; Hooberry v. Harding, 10 Lea 392. In New York by statute the income of trust property beyond what is required for the education and support of the beneficiary is liable for his debts. In New Jersey the income above $4,000 is liable, but see Lippincott v. Evens, 35 N. J. Eq. 553; Freeholders v. Henry, 41 N. J. Eq. 388. Where the debtor in a will is entitled to the annual interest to the extent of a quarter of a million dollars he ought not to be protected in the enjoyment free from liability for the payment of his debts where he is an absolute owner of the interest. Hardenburgh v. Blair, 30 N. J. Eq. 42. The assignment of an annuity due from parties and property out of the state to a receiver under the direction of the court will enable the receiver to collect it in a foreign state; but where the fund is held in trust for the debtor and has proceeded from some person other than the debtor himself it cannot be reached. (See Stat.) Frazier v. McWilliams, 19 N. J. Eq. 316. And see Green v. Tatum, 19 N. J. Eq. 105, under the law of 1845. The income of a life trust for the support of the grantor under a deed of trust may be reached. Bryan v. Knickerbacker, 1 Barb. Ch. 409. And so the life interest of a husband in proceeds of his wife's real estate where it has been sold in partition. Ellsworth v. Cook, 8 Paige Ch. 643. An annuity given by a testator to his widow, in lieu of dower, and charged upon his real and personal estate by his will, can be reached by creditors of the widow under a creditor's bill against her. Degraw v. Clason, 11 Paige (N. Y.), 136. If a creditor has a lien upon a life estate, held by a trustee in trust for the debtor, the court may order a sale of such life interest in satisfaction of the claim. Forbes v. Smith, 8 Ired. (N. C.) Eq. 30.

be assigned those cases which hold that trust property cannot be reached by a creditor's bill. To the other class of courts which base their equitable remedies upon broad and general equitable principles of right and justice between man and man are to be assigned those cases which hold that trust property may be reached on the application of a judgment creditor, or at least so much thereof as is not required for the support of the debtor and his family.

The tying up of property in the hands of a trustee in effect is in restraint of alienation and is not for this reason favored by the courts.

A condition in a deed or will providing that it shall not be subject to alienation or levy is void.[7]

The rules above stated hold good in reference to personal property, as in the case of real estate.

§ **286. Restrictions on Estates in Fee.**—A restriction by way of condition or devise over, or against alienation of an estate in fee, is void, as repugnant to an estate devised to the first taker, by depriving him during that time of the inherent power of alienation. Where there is by express terms a grant in fee simple and an immediate vesting of title with no conditions subsequent or limitation over to defeat the estate an attempt to prevent consequences of the ownership thereof from attaching thereto cannot avail. In a devise of land in fee simple a condition against alienation is void as being repugnant to the estate devised.[8]

[7] Potter v. Couch, 141 U. S. 296; McCleary v. Ellis, 54 Ia. 311; McDowell v. Brown, 21 Mo. 57; Menken v. Brinkley, 94 Tenn. 721; De Peyster v. Michael, 6 N. Y. 467; Blackstone Bank v. Davis, 21 Pick. 42. This appears to be the law in England. Brandon v. Robinson, 18 Ves. Jr. 429; Bradley v. Piexoto, 3 Ves. Jr. 324. Some cases hold such conditions in grants to be void on the ground that they are repugnant to the estate granted. Lovett v. Gillender, 35 N. Y. 617, affirming S. C. in 44 Barb. 560.

[8] Henderson v. Harness, 176 Ill. 302; Jones v. Port Huron Engine Co., 171 Ill. 502; Potter v. Couch, 141 U. S. 296; McDonogh v. Murdock, 15 How. 367; Steib v. Whitehead, 111 Ill. 247; Roose-

Where an estate is created for life to vest without condition or limitation a restriction on the power of alienation is repugnant to an estate devised to the first taker, because depriving him during the time he holds the estate of the inherent power of alienation.[9]

The rule is not the same, however, where the legal title to the property has been vested in a trustee for the use of the beneficiary under specific conditions. That is the most appropriate, if not the only way, of accomplishing the protection of the subject of a devise from creditors. Except by the intervention of trustees an estate cannot be devised for the benefit of the legatee in such a manner that it cannot be seized for the debts of one having a life estate therein.[10]

§ **287. Trusts Created by the Debtor.**—The rule of law applicable to trusts created by the debtor upon his own property rests entirely upon a different basis from trusts created by a third person for the debtor's benefit. Thus where part of the consideration for a

velt v. Thurman, 1 Johns. Ch. 220; Mandlebaum v. McDonell, 29 Mich. 78; Anderson v. Carey, 36 Ohio St. 506; Norris v. Hensley, 27 Cal. 439; Blackstone Bk. v. Davis, 21 Pick. 42; Smith v Clark, 10 Md. 186; Lane v. Lane, 8 Allen 350; Gleason v. Fayerweather, 4 Gray 348; Lovett v. Gillender, 35 N. Y. 617; Van Rensselaer v. Dennison, 35 N. Y. 393; Oxley v. Lane, 35 N. Y. 340; Schermerhorn v. Negus, 1 Denio 448; Hall v. Tufts, 18 Pick. 455; Dick v. Pitchford, 1 Dev. & Bat. Eq. 480.

[9] Henderson v. Harness, 176 Ill. 302; Bank v. Davis, 21 Pick. 42; Deering v. Tucker, 55 Me. 284; Keyser's Appeal, 57 Pa. St. 236; McCormick Harvester Mach. Co. v. Gates, 75 Ia. 343; McCleary v. Ellis, 54 Ia. 311.

[10] Henderson v. Harness, supra; Steib v. Whitehead, 111 Ill. 247. This was a case where a testator devised all his lands to trustees to keep such lands, etc., well rented, to make reasonable repairs on the same, to pay all taxes and assessments thereon, to keep the buildings insured against fire, and pay all remaining rents and income in cash to a devisee, it appearing that it was the intention of the testator to place the net income of the property beyond the control of the devisee. The court held: That a father may, by will or otherwise, make such reasonable disposition of his property, when not required to meet any duty or obligation of his own, as will effectually secure to his child a competent support for life, and the most appropriate, if not the only, way of accomplishing such an object is through the medium of a trust.

conveyance was that the grantee should pay the grantor's debts it will be chargeable with such debts. The proceeding, however, in such case is more nearly a proceeding to enforce a trust.[11]

The common and usual ground upon which trust property is reached and applied in satisfaction of creditors' demands is where the debtor has placed his property in trust in violation of the statute of frauds.[12]

[11] A grantor conveyed land to his grantee in consideration that the latter would pay the former's debts and support him during life. It was held that the land was chargeable in equity with the grantor's support and debts. Hamilton v. Barricklow, 96 Ind. 398. It is doubtful if a parol trust can be reached in equity. Cobb v. Cook, 49 Mich. 11. Neither law nor sound policy will permit a person having the absolute title to property so that he may use it or dispose of it as he pleases, and for his own benefit to cover it up from his creditors under the guise of a mere nominal trust. Degraw v. Clason, 11 Paige Ch. 136. To make out a trust for the benefit of the creditor the money must be paid at or before the execution of the conveyance, and not after. Niver v. Crane et al., 98 N. Y. 40; Jackson v. Moore, 6 Cow. 706; Botsford v. Burr, 2 Johns. Ch. 405; Steere v. Steere, 5 Johns. 1; Jackson v. Seelye, 16 Johns. 197; Rogers v. Murray, 3 Paige, 390, 391; Russell v. Allen, 10 Paige, 249. After attempts to collect judgments are fruitless, and the debtor has fraudulently transferred property to an estate held by him as trustee for his wife and children, and has so intermingled his money with that belonging to the trust estate that a separation is difficult, his interest therein may be determined. A case for equitable interposition is presented. Lathrop v. McBurney, 71 Ga. 815. The rule in New York seems to be that independent of enabling acts, the court of chancery has jurisdiction to sequester for the payment of debts any property not subject to execution at law, when held on a trust created by a judgment debtor with his own funds in fraud of creditors. Hardenburgh v. Blair, 30 N. J. Eq. 645; Bayard v. Hoffman, 4 Johns. Ch. 450; McDermott v. Strong, 4 Johns. Ch. 687; Hadden v. Spader, 20 Johns. 554. When a trust is created by agreement the entire amount thereof may be reached by judgment creditors, and they are not limited to a proceeding in equity to reach the surplus of the income over and above his needs. Everett v. Peyton (App. Div.) 55 N. Y. Supp. 464. The commencement of an action by a judgment creditor, assailing a trust created by the debtor on the ground that it is fraudulent as to creditors, subjects the trust property to a lien. Bissell v. Continental Trust Co., 25 Misc. 724, 55 N. Y. Supp. 570.

[12] The principle has no application to a trust created by a third party for the benefit of the debtor. A trust of that kind being a mere gratuity is not in violation of the statute. Creditors are not misled or defrauded thereby. Hardenburgh v. Blair, 30 N. J. Eq. 645; Nicols v. Eton, 91 U. S. 716; Donovan v. Finn, Hopk. Ch. 59.

A creditor who by a bill in equity seeks to reach and apply in satisfaction of a debt the debtor's interest in a trust fund does not acquire a lien by the filing of his bill, and thus prevent the property passing to an assignee.[13]

§ 288. **Trusts Subject to the Rights of Creditors.** —(a) Where property is conveyed to another, in consideration of which the latter agrees to pay the debts of the former, the property thus conveyed becomes impressed with a trust in favor of the creditors of the grantor and they upon obtaining a judgment against the trustee-grantee are entitled to file a bill and subject the property to the payment of the judgment.[14]

(b) Where a debtor has conveyed land in trust to secure a creditor a court of equity at the instance of other creditors may sell the land so conveyed and apply the surplus over and above the first creditor's debt to the satisfaction of the debts due other creditors.[15]

(c) Where land of a decedent is bought by the heirs at a sale of land made under a decree in favor of the estate, and the purchase money is retained under a condition embodied in the report of sale and the commissioner's deed that such purchase money shall be accounted for on the final account, an express trust is created which may be enforced by a creditor of the decedent by subjecting the land to the payment of his

[13] Titcomb v. Bradlee, 159 Mass. 190.

[14] Where land is conveyed to another in consideration that the latter would pay the grantor's debts, and a creditor obtained a judgment against the grantee and filed a bill to subject the property to the payment of his judgment. Held that plaintiff was entitled to recover against the grantee and his wife, to whom part of the property had been conveyed without consideration. Kaiser v. Waggoner, 59 Ia. 40. An agreement to support the grantor, if it forms a substantial part of the consideration for land, is a secret trust, and if the grantor afterwards is unable to pay his debts it will be void as to creditors. Funk v. Lawson, 12 Ill. App. 229.

[15] Schultz v. Blackford, 9 Lea. 431.

debt if the other assets of the estate are insufficient to pay the debts.[16]

(d) If property is alienable income can be reached.[17]

(e) And so a life estate if fraudulently conveyed.[18]

(f) The surplus income where there is an express trust.[19]

(g) An annuity that is due and payable.[20]

(h) A creditor's bill is the only method of reaching and applying a resulting trust.[21]

[16] Westbrook v. Munger, 62 Miss. 316.

[17] The rule is that if the debtor's interest in the income from a trust estate is alienable it may be reached by his creditors. Hardenburgh v. Blair, 30 N. J. Eq. 645.

[18] Newman v. Willitts, 60 Ill. 519.

[19] Clute v. Bool, 8 Paige Ch. 83; Williams v. Thorn, 70 N. Y. 270. The interest of a married woman in the surplus income when the debt was contracted before marriage. L'Amoureux v. Van Renselaer, 1 Barb. Ch. 34. But not future rents and profits; or her separate property. Mallory v. Vanderheyden, 3 Barb. Ch. 9. Where the income of stocks was willed to a son during his life, and upon certain contingencies, and upon his death his wife should be entitled to support out of the income, held that the widow of the son had no interest a creditor could reach. Slattery v. Wason, 151 Mass. 266; Baker v. Brown, 146 Mass. 369.

[20] The life annuity payable semi-annually from the income of real and personal property in the hands of trustees beyond what is necessary to support the annuitant and his family may be reached. Sillick v. Mason, 2 Barb. Ch. 79; Rider v. Mason, 4 Sandf. Ch. 351. But an annuity to mature in the future is not. Clute v. Bool, 8 Paige Ch. 83. An annuity bequeathed to a widow in lieu of dower and charged upon real and personal property by will is liable. Degraw v. Clason, 11 Paige Ch. 136.

[21] A creditor's bill is the proper remedy to reach and apply to the satisfaction of plaintiff's judgment a resulting trust which is not capable of being reached in an action at law. McDermott v. Strong, 4 Johns. Ch. 687; Wilkes v. Ferris, 5 Johns. 335; Scott v. Scholey, 8 East. 467; Bayard v. Hoffman, 4 Johns. Ch. 450; Brinckerhoff v. Brown, 4 Johns. Ch. 671. "It is impossible to raise a resulting trust so as to divert the legal estate of the grantee by the subsequent application of the funds of a third person to the improvement of the property, or to satisfy the unpaid purchase money." Rogers v. Murray, 3 Paige, 390, 391. The whole foundation of a trust of this nature is the payment of the money by the cestui que trust, the real, not the nominal purchaser. Niver v. Crane et al., 98 N. Y. 40. The doctrine that a trust, in order to exist, must have been co-eval with the deeds, and that after one person has made a purchase with his own money or credit, no subsequent transaction, whether of payment or reimbursement, can produce such a trust in his favor, is well settled. Says Chancellor Kent in Botsford v. Burr (2 Johns. Ch. 405): "There never was an instance of such a trust so created, and there

(i) And so in regard to a pure trust.[22]

(j) But not to reach alimony due a divorced wife.[23]

(k) Nor to reach a devisee's share in an equitable remainder.[24]

(l) Money in the hands of an executor subject to the demand of the *cestui que trust* is subject to the rights of creditors through a court of equity.[25]

And so, also, where money is in the hands of an attorney with notice of the rights of judgment creditors, and which he has acquired as the attorney of the debtor, or in violation of his duty as an attorney.[26]

§ **289. Trust Property Converted May be Followed.** —As long as trust property may be followed it is subject to the trust; if converted into other property the latter is liable. And so where the trust fund is mixed with other funds the whole will be liable except such as may be identified as not belonging to the trust.[27]

never ought to be, for it would destroy all the certainty and security of conveyances of real estate. * * * The trust results from the original transaction at the time it takes place, and at no other time; and it is founded on the actual payment of money, and on no other ground." (Quoted in Niver v. Crane.)

[22] A bill to reach property paid for by the debtor, but where title is in another, is a bill to enforce a pure trust. McCartney v. Bostwick, 32 N. Y. 53; Wood v. Robinson, 22 N. Y. 564. And the enforcement of such a trust is one of the original and inherent powers of a court of equity. Id. Cf. Chautauqua Co. Bk. v. White, 6 N. Y. 236; Hagan v. Walker, 55 U. S. 29; Loomis v. Tifft, 16 Barb. 541; Darrington v. Borland, 3 Porter (Ala.) 9, 31; McElwain v. Willis, 9 Wend. 548; Innes v. Lansing, 7 Paige 583; Bodine v. Edwards, 10 Paige 504; Earl of Chesterfield v. Janssen, 2 Ves. St. 125. In all cases of direct trust, such as mortgages of real estate or pledges of personal property, a court of equity will grant relief on its own peculiar principles. Disborough v. Outcalt, 1 N. J. Eq. 298.

[23] Andrews v. Whitney, 82 Hun, 117, 31 N. Y. Sup. 164.

[24] Bartholomew v. Weld, 127 Mass. 210.

[25] Money in the hands of executors subject to the demand of the cestui que trust may be reached. Wells v. Ely, 11 N. J. Eq. 172.

[26] Cowing v. Greene, 45 Barb. (N. Y.) 585.

[27] Liverpool Ins. Co. v. Mass, 77 U. S. 566. Where there has been a misapplication of trust funds by trustees, or persons standing in a fiduciary relation, and the money or property mis-

§ **290. Equity Jurisdiction of Estate in Probate — When.**—Under a bill filed to reach certain real and personal property standing in the name of a trustee for the wife and children of the debtor, and which was fraudulently added to their estate by the debtor, and the debtor's estate is insolvent, chancery has jurisdiction of the case to withdraw the administration from the court of probate.[28]

And so jurisdiction will be entertained where property that has been conveyed in trust for creditors has been sold under execution to determine whether all the debts secured have been paid pursuant to the trust and secured thereby.[29]

If a contract is of such nature and character that the money to become due thereunder is not impressed with a trust a court of equity will not take jurisdiction.[30]

§ **291. Equity Jurisdiction of Property in a Foreign State.**—If the property which is the subject matter of the trust is in a foreign jurisdiction it has been held that a trust in regard thereto cannot be enforced.[31]

applied has been laid out in land or other species of property, the court lays hold of the substituted property and follows the original funds through all the changes it has undergone until the power of identification is gone, or the rights of bona fide purchasers stop the pursuit and holds it in its grasp to indemnify the innocent victim of the fraud. American Sugar R. Co. v. Fancher, 145 N. Y. 552. In case of money which is said to have no earmark its identity will not be deemed lost though it is mingled with other money of the wrongdoer if it can be shown that it forms a part of the general mass. American Sugar Ref. Co. v. Fancher, 145 N. Y. 552; Pennell v. Deffell, 4 DeG. M. & G. 372; Re Hallett, 13 Ch. Div. 696; Holmes v. Gilman, 138 N. Y. 369.

[28] Pharis v. Leachman, 20 Ala. 662.

[29] Justice v. Scott, 4 Ired. Eq. 108.

[30] Reddington v. Lanahan, 59 Md. 429.

[31] Servis v. Nelson, 14 N. J. Eq. 94. It would seem that where the court has jurisdiction of the parties and the subject matter in controversy that the doctrine of this case is stated too broadly. See Sercomb v. Catlin, 128 Ill. 556.

CHAPTER XI.

FRAUDULENT SALES OF PERSONALTY.

§ 300. General—Statute of 13 Eliz.—Twyne's case.
301. Fraudulent transfer of stock.
302. Sale induced by fraud of vendee.
303. General assignment for the benefit of creditors.
304. Fraudulent contract not rescinded—remedy.
305. Reassignment of notes and mortgage.
306. Conditions of rescission.
307. Representations that are fraudulent.
308. Fraudulent assignment.
309. Liability of fraudulent purchaser.
310. Rescinded contract—Resulting trust not established.
311. Proceeding in equity to recover goods or value not sustained.
312. Fraud of vendee—Attitude of third party—Title.
313. Fraudulent purchase—Proceeds reached—Assignment.
314. Deposits in an insolvent bank.

Section **300. General—Statute of 13 Eliz.—Twyne's Case.**—By the statute of 13 Eliz. ch. 5, all transfers of property, real and personal, if made with the intention of defrauding creditors are null and void. This statute, in substance, has been adopted in all the states of this country, and, indeed, in the absence of statutory enactment its substance would be recognized and treated as the common law of the country, as it was in fact the common law of England prior to the acts of Parliament known as 13 and 27 Eliz. It was probably owing to the prevalence of covinous transfers of property in the age of Elizabeth that induced the passage of the statute rather than the lack of an existing adequate remedy for such transactions. "Because fraud and deceit abound in these days more than in former times." The statute of 13th Eliz. was followed in 1601 by the celebrated Twyne's case, which

has become as famous, perhaps more so, in jurisprudence than the statute in Parliamentary enactments. And it will be remembered in this connection that this pioneer case in fraudulent and covinous transfers originated partly, if not wholly, with reference to personal property. Like the statute, it was at first general and limited in its application, but has since been extended so as to cover subsequent creditors under certain limitations and now intangible rights and choses in action as well.

§ **301. Fraudulent Transfer of Stock.**—A judgment creditor has a right to proceed by a bill in equity to set aside an alleged fraudulent transfer of stock by his debtor in the same manner as if the same were real estate. The character of property is immaterial, under the statutes and general principles of equity, except in the matter of evidence.[1]

§ **302. Sale Induced by Fraud of Vendee.**—Where a sale of personal property was induced by fraud on the part of the vendee and the property has been sold by the latter and the proceeds in the shape of notes or credits are identified in the hands of the assignee of the vendee a court of equity has power, in the absence of adequate legal remedy, to reach such proceeds and apply them for the benefit of the vendor. The property itself not being susceptible of application the proceeds are available.[2]

In such case the assignee of the vendee stands in no better position than his assignor.

§ **303. General Assignment by Vendee for Creditors.**—A question of novel character arises where the fraudulent vendee, before the discovery of the fraud by the vendor, makes a general assignment for the bene-

1 Ladd v. Smith, 107 Ala. 506.
2 American Sugar Ref. Co. v. Fancher, 145 N. Y. 552, reversing 81 Hun, 56.

fit of creditors, and the fraudulently acquired property together with outstanding accounts due for such parts of the property as have been sold pass to the assignee's possession, and a bill is filed by the vendor against the assignee to recover the unsold portion of the goods and the accounts for the portions sold. The difficulty in such case arises from the fact that in this country, as well as in England, the title passes to the vendee and consequently to the assignee and remains in the vendee or assignee, until rescission of the contract by the vendor. The reinvestment of the vendor with the title to the unsold property and a right to the unpaid accounts seemingly in effect gives the vendor a preference over the general creditors who are equally meritorious. But the assignee in such case is a volunteer and not a purchaser for value and takes the assigned property subject to the equities of the defrauded vendor, among which is the right of the vendor to rescind the contract by reason of fraud and be placed in *statu quo*. Property or its proceeds acquired by fraudulent practices is not in justice and equity a fund in the hands of the purchaser in the absence of specific liens acquired thereon, such as will be impressed with the equities of general creditors, unless indeed it should be where they become creditors by force of the apparent ownership of the property. And no valid reason is perceived why an assignee has any better standing than the assignor.[3]

§ 304. Fraudulent Contract Not Rescinded—Remedy. —Where by fraud a person has been induced to enter into a contract and is not permitted by reason of circumstances to rescind it he may properly keep what he has received and sue for damages at common law, or

[3] American Sugar Ref. Co. v. Fancher, 145 N. Y. 552.

he may, in a court of equity, obtain relief on offering to restore what he has received.[4]

It is a rule in equity that one who asks to rescind a contract or set aside a compromise that has been procured by fraud must return what he has received, or at least tender it back. If possible the parties must be placed in *statu quo.*[5]

The tender must be in a reasonable time after the default of the other party, and what is a reasonable time is to be governed by the particular circumstances of each case.[6]

§ **305. Reassignment of Notes and Mortgage.**—Where an assignment of notes and a mortgage is procured by fraudulent representations as to the amount due on the notes a mere tendering back of the assignment and notes is not sufficient. There must be a reassignment of the mortgage, in order to revest the legal title in the fraudulent assignor. The mere delivery back of the assignment will not be sufficient.[7]

§ **306. Conditions of Rescission.**—A contract will not be rescinded unless steps are taken within a reasonable time and when both parties may be placed in *statu quo.* If the party desiring to rescind cannot, or has placed himself in a position that he cannot, put the other party in the position he was in when the contract was made a rescission cannot be had.[8]

The rescission of a contract will not be decreed by a court of equity where there is a plain and adequate

[4] Gould v. Cayuga County Bank, 99 N. Y. 333. A recision is not always necessary. If it can be amended by a court of equity to conform to fair dealing, this may be done. Elfelt v. Hart, 1 McCrary C. Ct. 11.

[5] Stewart v. Houston & Texas Central Ry. Co., 62 Tex. 246.

[6] Willard v. Ford, 16 Neb. 543.

[7] Chase v. Hinckley, 74 Me. 181.

[8] A lease of a coal mine cannot be rescinded after the lapse of twenty months, and upon facts known to the lessee for three years where it is impossible to put the other party in statu quo. Watson Coal & C. Co. v. Casteel, 68 Ind. 476.

remedy at law. The inadequacy of the common law remedy must appear on the face of the bill or petition.[9]

§ 307. Representations That Are Fraudulent.—The representations such as will justify the rescission of a contract must be of material existing facts and not mere promises of what will be done in the future or is expected to be done.[10]

Representations resulting in procuring the execution of a deed under the belief that it was an entirely different instrument will be sufficient cause for granting relief in equity.[11]

A contract real estate broker who in collusion with the purchaser concealed material facts from his principal and otherwise worked against him cannot be enforced in equity and such contract will be set aside as fraudulent.[12]

§ 308. Fraudulent Assignment.—Where a transfer intended as an assignment for the benefit of creditors, to the exclusion of plaintiff, is void as to him he may after judgment and execution file a creditor's bill and set aside the transfer. In such case he is not required to pursue the statutory remedy supplementary to execution, as that remedy is not adequate to reach property in the hands of a transferee asserting an adverse title to the plaintiff.[13]

§ 309. Liability of Fraudulent Purchaser.—Where a transfer is fraudulent as to creditors the fraudulent purchaser will be liable for the value of the goods at the time of the transfer where they have been mingled with other goods and no separate account has

[9] Laidley v. Laidley, 25 W. Va. 525.

[10] Love v. Teter, 24 W. Va. 741.

[11] Tufts v. Tufts, 3 Utah, 361.

[12] Young v. Hughes, 32 N. J. Eq. 372.

[13] Rapp v. Whittier, 113 Cal. 429; cf. Swift v. Arents, 4 Cal. 390; Lewis v. Chamberlain, 108 Cal. 525; Herrlich v. Kaufmann, 99 Cal. 271.

been taken of the proceeds. The property is sometimes of such nature that its identity cannot be traced.[14]

Where it is made the duty of an executor to impeach a fraudulent sale made by his testator, if he refuses to do so, a creditor may institute an action for that purpose and will be entitled to recover, if the fraud is established. The same principle is applied to administrators, trustees and others acting in a similar capacity.[15]

§ 310. Rescinded Contract Does Not Establish Resulting Trust.—A contract for the purchase of land by a debtor which is not complied with by him, and for that reason has been rescinded, does not establish a resulting trust in the debtor for which a court of equity on the application of a creditor will grant relief, even though part of the purchase money has been paid on the contract. Any other rule would in effect be the substitution of a new party to the contract by operation of law.[16]

An agreement between parties whereby they agree to purchase property under an execution sale and hold it as security until other claims are paid and then to be held for the defendant, in the absence of fraud will be enforced.[17]

§ 311. Proceeding in Equity to Recover Goods Etc., Not Sustained. — A court of equity will not sustain a creditors' bill, though filed in behalf of all creditors, based upon the ground that goods were purchased of plaintiff when the purchaser was insolvent, and that when he bought them he had no intention of paying for them. The goods not being recoverable in

[14] Steere v. Bigelow (Hoagland), 50 Ill. 377; Laswell v. Robbins, 39 Ill. 209.

[15] Bate v. Graham, 11 N. Y. 237.

[16] Alexander v. Tams, 13 Ill. 221.

[17] Marlatt v. Warwick, 19 N. J. Eq. 439; Morrison v. Shuster, 1 Mackey (D. C.), 190.

such a proceeding payment for the value will not be decreed. In such a case there is clearly an adequate remedy at law.

§312. Fraudulent Vendee—Attitude of Third Party—Title.—Where a person is induced to part with his property by the fraud of another under the guise of a contract he may, on discovery of the fraud, rescind the contract and reclaim the property unless it has passed into the hands of a *bona fide* holder. In such case the fraud being established between the original parties the burden is upon the third party claiming the title to show that he is a *bona fide* holder.[18]

The title to the property vests in the vendee where the sale is procured by fraud until the sale is rescinded; in other words, the sale is voidable.[19]

§ 313. Fraudulent Purchase—Proceeds Reached—Assignments.—Courts of equity have jurisdiction to recover the proceeds of sales made by a fraudulent purchaser from the plaintiff where the sale by the plaintiff was induced by the fraudulent representations of the purchaser who at the time of the purchase was insolvent, and where the purchaser after the resales by him made an assignment for the benefit of creditors and the assignee collected and held in his possession money derived from the subsales, after notice from the plaintiff of the rescission of original sale for fraud.[20]

[18] Grant v. Walsh, 145 N. Y. 502. The law of New York is well settled that when a maker of negotiable paper shows that it has been obtained from him by fraud or duress a subsequent transferee must show that he is a bona fide purchaser before he will be entitled to recover. Vosburgh v. Diefendorf, 119 N. Y. 357; F. & C., N. & B. v. Noxon, 45 N. Y. 762; Ocean National Bank v. Carll, 55 N. Y. 440; Wilson v. Rocke, 58 N. Y. 642; Nickerson v. Ruger, 76 N. Y. 279; Bailey v. Bidwell, 13 M. & W. 73.

[19] Am. Sugar Ref. Co. v. Fancher, 145 N. Y. 552; Goodwin v. Wertheimer, 99 N. Y. 149; Barnardt v. Campbell, 58 N. Y. 73; Ratcliffe v. Sangston, 18 Md. 383; Bussing v. Rice, 2 Cush. 48. See, also, Small v. Attwood, Younge 407.

[20] In such case the assignee for creditors of the fraudulent vendee is not a purchaser for value, and stands in no better

§ 314. Deposits in an Insolvent Bank.—A somewhat similar principle is involved where a person deposits money in a bank relying on the supposed solvency of the bank, the bank being at the time insolvent and its managers knowing it to be such. The depositor in such case is entitled to recover the deposit or its proceeds.[21]

position than his fraudulent assignor. Am. Sugar Ref. Co. v. Fancher, 145 N. Y. 552; Goodwin v. Wertheimer, 99 N. Y. 149; Barnardt v. Campbell, 58 N. Y. 73; Ratcliffe v. Sangston, 18 Md. 383; Bussing v. Rice, 2 Cush. 48. Where a fund has been procured by fraud and misapplied, by a person occupying a fiduciary relationship, and converted into either specie or paper, the court lays hold of the substituted paper and follows the original fund through all its changes, until such time as its identification is lost, or the rights of bona fide purchasers stop pursuit. Newton v. Porter, 69 N. Y. 133. In such case of course the money has no earmark, but its identity will not be lost if it is shown to have been mingled with other money of the wrong-doer where it forms part of a general mass. Newton v. Porter, 69 N. Y. 133; Pennell v. Deffell, 4 De G. M. & G. 372; Re Hallett, 13 Ch. Div. 696; Holmes v. Gilman, 138 N. Y. 369.

[21] Cragie v. Hadley, 99 N. Y. 131; Metropolitan National Bank v. Loyd, 90 N. Y. 530.

CHAPTER XII.

ESTATES.

§ 320. Jurisdiction of equity in.
321. Interest of legatee reached in equity.
(a) When legatee may demand payment.
(b) When estate fully administered.
(c) When removal of cloud necessary.
(d) When estate not subject to control of devisees.
322. Death of debtor extinguishes old remedies.
323. Fraudulent discontinuance of assignment.
324. Scope of bill in matters of estates.
(a) To marshal assets—Property in another county.
(b) To marshal assets when heirs non-resident.
(c) To reach money in hands of commissioner.
(d) To reach proceeds of sale.
(e) To reach personal estate—Not followed when.
(f) To reach personal estate in hands of executor, etc.
(g) To reach assets in hands of administrator and heirs.
(h) To reach surety of debtor.
(i) To reach distributee's share.
(j) On bill for accounting—Decree against administrator.

Section **320. Jurisdiction of Equity In.**—Ordinarily the indebtedness of a deceased debtor is to be made through the methods of administration as provided by statute, and if an adequate legal remedy is thus provided equity will not assume jurisdiction on the application of a creditor. This is by reason of the general principle of equity jurisprudence that equity will not grant relief where an adequate remedy otherwise exists, and in most cases courts of probate have full and complete power for all exigencies that arise.[1]

§ 321. Legacy When Reached in Equity.—(a)

[1] Aldrich v. Annin, 54 Mich. 230; Eno v. Calder, 14 Rich. Eq. (S. C.) 154.

The interest of a legatee in an estate may be reached through the instrumentality of a court of equity where the condition of the estate is such that the legatee can demand payment. In such case the court charged with the administration of the estate has, so far as the legacy is concerned, exhausted its functions.[2]

(b) Where an estate has been fully administered leaving judgment creditors unpaid, and land has been devised by the testator to various devisees, it may be reached by a bill in equity. In such case it is not technically a proceeding to sell lands to pay debts, which could be done only in the probate court.[3]

The real estate of a deceased judgment debtor may be reached to satisfy the unpaid balance on a judgment.[4]

(c) Where it appears that a decree will be finally necessary to remove a cloud upon title equity has been held to have jurisdiction in the first instance in order to avoid a multiplicity of suits, and to afford full and complete relief to the creditors in a single proceeding.[5]

(d) Where an estate is devised in trust for the use of certain devisees named with a provision that the trust property in the hands of trustees shall not be subject to the control of the devisees or their creditors, and that it was the wish of the testator that the estate should not be subjected to the satisfaction of unjust judgments which the testator was under neither legal

[2] Hallett v. Thompson, 5 Paige, 583; Moores v. White, 3 Gratt. 139. And the suit may be by a foreign creditor. Green, Adx., v. Creighton, 64 U. S. 90; Lang v. Brown, 21 Ala. 179; Caldwell v. Montgomery, 8 Ga. 106. Where a will provides that certain property willed to a legatee shall not be subject to any indebtedness he may have contracted, but be used for his comfort and support, it does not operate to relieve the property from liability for his debts, and it may be reached in equity. Smith v. Moore, 37 Ala. 327.

[3] Hall v. Brewer, 40 Ark. 433; Macgill v. Hyatt, 80 Md. 253.

[4] De Clerq v. Jackson, 103 Ill. 658.

[5] Bank of Commerce v. Chambers, 96 Mo. 459.

nor moral obligation to provide for, such estate cannot be reached by the creditors of the legatees.[6]

The court is reluctant to decree a sale of the equitable interest of a judgment debtor in real estate where there is difficulty in determining the value and realizing an adequate price of such interest, and will not do so if another satisfactory remedy exists.[7]

Where an executor of a deceased debtor has paid money due on a bond given by the deceased debtor to an obligee on such bond an actual creditor of the deceased testator may file a bill to be satisfied out of such fund, where there is no other adequate remedy.[8]

§ **322. Death of Debtor—Effect as to Remedies.** —By the death of a judgment debtor remedies which might have been pursued during his lifetime are extinguished and a new class of rights and remedies are created. After his death the personal estate of the debtor is no longer liable to sale on execution and creditors are required to exhibit and establish their claims in the probate court and share in the distribution of the assets therein. In such case except where they have liens judgment creditors stand on the same footing as general creditors. In case of real estate the statute usually provides for a method of sale by the administrator to pay debts.[9]

The mere fact that a creditor may have exhausted his legal remedies against the debtor while living does

[6] Russell v. Milton, 133 Mass. 180. But see Bank of Com. v. Chambers, 96 Mo. 459, and Leake v. Benson, 29 Gratt. 153. A creditor with an unsatisfied judgment against the administrator de bonis non of his debtor cannot, in equity, reach assets of the debtor in the hands of the representative of the administrator in chief, against whom a decree settling the estate has been rendered and performed, in favor of the distributees. Thomas v. Sterns, 33 Ala. 137. The contingent right which a person has in the estate cannot be reached by a creditor's bill. Smith v. Kearney, 2 Barb. (N. Y.) Ch. 533.

[7] Bryan v. May, 9 App. Cases (D. C.) 383.

[8] Stephens v. Harris, 6 Ired. Eq. 57.

[9] Winslow v. Leland, 128 Ill. 304.

not furnish a sufficient ground for a proceeding by a creditor's bill to reach personal estate while the administration of the estate of the debtor is in progress. This is particularly so where no fraud is charged against the intestate, and the only scope of the bill is a remedy against the fraud or the failure of duty of the administrator himself, and to reach property which the administrator is entitled to but which he has failed to get into his possession.[10]

§ **323. Fraudulent Assignment—Discontinuance of.**—A fraudulent assignment may be as obnoxious to the rights of creditors as a fraudulent conveyance, and in case of a fraudulent discontinuance of assignment proceedings a creditor's bill will lie to reach the assets of the insolvent estate. The assigned estate cannot be used to procure the assent of creditors in buying up their claims and thus procure a discontinuance where there is no restoration of the estate to the debtor except in form, but it is put beyond the reach of non-assenting creditors. Such a transaction is fraudulent and void. And in a suit by a creditor, after the assignment proceedings have been discontinued, to reach unadministered assets a creditor who has bought up the claims at a large discount is not, cannot set up against the fund the face value of the claims so purchased. He is only entitled to the amount expended.[11]

[10] Winslow v. Leland, 128 Ill. 304, 338; Reitzell v. Miller, 25 Ill. 53; Paschall v. Hailman, 4 Gilm. 285; Turney v. Gates, 12 Ill. 141; Clingman v. Hopkie, 78 Ill. 152. The general rule seems to be that in case of a deceased person a court of equity will not ordinarily assume jurisdiction until a claimant shall have exhibited his claim and had it allowed in the County (Probate) Court. Then, however, if any special reasons that may be deemed sufficient can be assigned why that court cannot afford the requisite relief equity will assist, but not otherwise. Winslow v. Leland, 128 Ill. 304, 340; Harris v. Douglas, 64 Ill. 466; Blanchard v. Williamson, 70 Ill. 647.

[11] American Exchange Nat. Bk v. Walker, 164 Ill. 135, affirming S. C. in 60 Ill. App. 510; cf. Howe v. Warren, 154 Ill. 227; Terhune v. Kean, 155 Ill. 506. Upon a discontinuance of the assignment the trust created by the assign-

§ 324. Scope of Bill in Matters of Estates.—(a) Where the court has jurisdiction of the parties under a bill filed to marshal the assets of a deceased debtor the validity of a conveyance made by the debtor may be determined, although the suit may be in a county other than that in which the land is situated.[12]

(b) Under a bill by a creditor of a deceased debtor to marshal the assets and subject certain lands or their proceeds within the state to the payment of debts the heirs of the deceased debtor residing abroad may be made defendants as absent or non-resident parties, and if the land has been sold and the proceeds are in the hands of a court commissioner he is a necessary party, and particularly so if an injunction is sought against his paying over the money.[13]

(c) Where money in the hands of a commissioner derived from a sale under a decree of court is paid over by him to the heirs of a deceased debtor under an order of court he will not be affected by the *lis pendens* of a creditor's suit to which he is not, as commissioner, a party and of which he has no knowledge.[14]

(d) Where a creditor of a deceased debtor is entitled to maintain a suit in equity against the heirs of such debtor on account of land inherited by them a decree may be rendered against the proceeds derived from a sale thereof which are in the hands of the court.[15]

(e) Personal estate will not be followed in the hands

ment is terminated and the debtor again has his estate liable to be taken in satisfaction of his indebtedness as if no assignment had been made. Howe v. Warren, supra. Where the assignor assigned a large portion of his estate to a third person in consideration that the latter would compromise the claims of creditors and procure their consent to a discontinuance is fraudulent and void, and in such a case a court of equity has jurisdiction. Howe v. Warren, supra.

[12] Coleman v. Franklin, 26 Ga. 368.

[13] Carrington v. Didier, 8 Gratt. 260.

[14] Carrington v. Didier, 8 Gratt. 260.

[15] Van Wezel v. Wyckoff, 3 Sandf. Ch. 528.

of a third person to whom an administratrix has wrongfully paid in the absence of proof that the administratrix and sureties are irresponsible.[16]

(f) A court of equity has jurisdiction to reach the assets of a deceased debtor in the hands of the executor and legatees to whom such assets have been delivered upon an assumption on their part to pay all debts against the estate.[17]

A creditor's bill may call for an accounting as to personality and the decree should make provision for its application in order to relieve real estate.[18]

Where the bill is filed for the distribution of a lunatic's estate there cannot be a preference allowed to one creditor over another.[19]

(g) A bill in equity may be maintained in behalf of the equitable holder of judgments against the administrator and heirs of a deceased judgment debtor for the purpose of discovering assets of the intestate.[20]

(h) Before a creditor will be entitled to maintain suit against the estate of an intestate surety of principal debtors the remedy against the principals must first be exhausted, and before proceeding against sureties of an intestate principal the estate of the principal coming to the hands of heirs and devisees should be first exhausted.[21]

(i) Where the purpose of the bill is to reach a distributee's share in an estate and subject the same to the payment of creditors it will be sustained if the plaintiff's remedy at law is not plain and adequate.[22]

(j) Where a bill is filed by a creditor against an ex-

[16] Jackson v. Forrest, 2 Barb. Ch. 576.

[17] Moore v. Caldwell, 8 Rich. Eq. 22.

[18] New v. Bass, 92 Va. 383.

[19] In re Adelia Otis, 101 N. Y. 580.

[20] Thomas v. Adams, 30 Ill. 37.

[21] Thomas v. Adams, 30 Ill. 37; Carlton v. Felder, 6 Rich. Eq. 58.

[22] A creditor's bill may be sustained against the judgment debtor to reach his interest in his deceased father's estate. McArthur v. Hoysradt, 11 Paige Ch. 495.

ecutor for an accounting and distribution of the personal estate and by the pleading it is admitted that the executor has assets in his hands a decree against him is proper.[23]

[23] Kennedy v. Creswell, 101 U. S. 641. Creditors may file a bill against the heirs and devisees for an account and the sale and distribution of the real estate descended to make good any personal assets. Thompson v. Brown, 4 John. Ch. 619. A creditor's bill may be sustained against executors and administrators for a discovery and distribution of assets. Thompson v. Brown, 4 John. Ch. 619; but not against the widow and heirs. Wilber v. Collier, 3 Barb. Ch. 427. A creditor has a right to come into a court of equity in an estate matter only for an account and the discovery of assets, and on the ground of a trust in the executor or administrator. McKay v. Green, 3 John. Ch. 56. An action may be brought by a creditor under Wis. Rev. Stat. § 3835 on behalf of all in the Circuit Court to reach and subject to sale any assets not included in the inventory which ought to be subjected to payment of debts. Richter v. Leiby, 75 N. W. 82. If an estate is insolvent within the Tennessee statute, a creditors' bill may be filed in the Chancery Court, where the personal estate is insufficient to pay the debts, and has been exhausted, leaving unpaid debts, although there is real property sufficient to pay the unpaid debts. Bank of Blount County v. Smith, 48 S. W. 296.

CHAPTER XIII.

INJUNCTION.

§ 330. Injunction against debtor rarely granted.
(a) To prevent removal of property from jurisdiction.
(b) When there has been a fraudulent purchase.
(c) When a lien or trust exists, and no other remedy.
331. Injunction against conspiracy to defraud.
332. Injunction against creditors, when.
(a) Where a general assignment has been made.
(b) Effect of assignment in a foreign state.
(c) Jurisdiction in such cases.
(d) Attachments in foreign states.
(e) Where receiver has been appointed.
(f) Where claim has been proven in estate proceeding.
(g) Where claim is barred as domestic claim.
(h) Where suit in foreign state to evade exemption laws.

Section **330. Injunction Against Debtor Rarely Granted.** —It is contrary to the policy of the law to permit a creditor who has no judgment to come into a court of equity and restrain a debtor from selling and disposing of his property and effects pending a common law action against him for the recovery of a judgment. The high and extraordinary power of a court of equity will not be exercised by writ of injunction for the purpose of restraining a debtor from enjoying and disposing of his property at the instance of a simple contract creditor. A contrary rule would vest courts of chancery with an arbitrary power, despotic in its nature, and liable to the grossest abuse growing out of the peculiar whims and idiosyncrasies of the particular judge before whom application might be made. The safe and well defined rules of law though sometimes tardy and sluggish in motion have in them a guaranty of protection to citizens at large which would not exist if the property of

every debtor, pending litigation, protracted or otherwise, could be impounded at the instance of creditors. Suspected, or even actual, insolvency is not a *quasi* crime meriting sequestration except through the established forms of law. It were better that a dishonest debtor now and then succeed in his schemes of fraud than that the right of free alienation be trammeled and restricted.[1]

A few cases are to be found where an injunction has been granted restraining the disposition of the debtor's property pending a suit for the recovery of judgment against him, but the great weight of authority, as well as reason and public policy, is against it.[2]

(a) An apparent exception to the rule is where an attachment lien has been secured and an injunction granted to restrain the removal of the property from the jurisdiction of the officer holding it under the attachment, by other creditors having executions based on

[1] Uhl v. Dillon, 10 Md. 500; National Tradesmen's B'k v. Wetmore, 124 N. Y. 241; State B'k v. Chatten, 59 Kan. 303. A court of equity will not enjoin the disposition of property alleged to have been fraudulently transferred. This is based on the ground of a remedy at law existing. Shufeldt v. Boehm, 96 Ill. 560; Phelps v. Foster, 18 Ill. 309; Bigelow v. Andress, 31 Ill. 322; McNab v. Heald, 41 Ill. 326; Heacock v. Durand, 42 Ill. 230; McConnel v. Dickson, 43 Ill. 99; Horner v. Zimmerman, 45 Ill. 14. In Kansas a creditor cannot sustain an action to enjoin one in whose name the title to land paid for by the debtor has been taken, from conveying it, until he has reduced his claim to judgment. State Bank v. Chatten, 59 Kan. 303. The issuance of an injunction and the appointment of a receiver under a Creditors' Bill are in the discretion of the court. Schroetter v. Brown, 59 Ill. App. 24. When a Creditors' Bill charges that the debtor has choses in action in his possession and asks for a discovery and the bill is taken for confessed, it is not error to enjoin the debtor from disposing of his property, and to appoint a receiver. Runals v. Harding, 83 Ill. 75; cf. First N. Bk v. Gage, 79 Ill. 207; Dows v. McMichael, 2 Paige 345. If the defendant has in fact no property he cannot be injured by the appointment of a receiver and the granting of an injunction. Bloodgood v. Clark, 4 Paige 574.

[2] Moore v. Kidder, 55 N. H. 488; Cohen v. Meyers, 42 Ga. 46. A court of equity will not intervene by way of injunction, or otherwise, in behalf of a simple contract creditor upon the ground that his debtor had made a fraudulent transfer of his property. Bigelow v. Andress, 31 Ill.

alleged fraudulent judgments.[3] (b) There is also another apparent exception where an action is brought

322. A creditor at large has no right to enjoin an alleged fraudulent grantee from selling or disposing of property. North Hudson B. & L. As. v. Childs, 86 Wis. 292; Reubens v. Joel, 13 N. Y. 488; Montague v. Horton, 12 Wis. 599; compare Damon v. Damon, 28 Wis. 510; Gibson v. Gibson, 46 Wis. 449; Way v. Way, 67 Wis. 662. The general rule is that an injunction will not issue at the instance of a general creditor to restrain the debtor from disposing of his property in fraud of creditors. Oakley v. Pound, 14 N. J. Eq. 178; Wiggins v. Armstrong, 2 Johns. Ch., 144; Hall v. Stryker, 27 N. Y. 596; Rinchey v. Stryker, 28 N. Y. 45; Frost v. Mott, 34 N. Y. 253. It should be observed, also, that in these cases suit was brought by the grantees against the attaching creditor and while not overruled in so far as a defending attaching creditor is concerned they are overruled by Whitney v. Davis, supra, so far as any affirmative action by the attaching creditor is concerned against alleged fraudulent grantees, and are not to be considered as authority for equitable action pending the attachment suit. In Thurber v. Blanck, 50 N. Y. 80, and Mechanics and Traders' Bank v. Dakin, 51 N. Y. 519, the right of the attaching creditor to an equitable action to remove fraudulent transfers is made to depend upon an exhaustion of legal remedies by the recovery of a judgment. Cf. Falconer v. Freeman, 4 Sandf. Ch. 565; Bates v. Plousky, 28 Hun, 112; Keller v. Payne, 22 Abb. N. C. 352; Tannenbaum v. Rosswog, 22 Abb. N. C. 346, 354; Witmer's Appeal, 45 Pa. St. 455; Gill v. Weston, 110 Pa. St. 305.

[3] The general rule is that until the recovery of a judgment and the issuance of an execution no equitable action can be maintained by an attaching creditor to set aside fraudulent transfers or to reach equitable assets. Whitney v. Davis, 148 N. Y. 256. This rule is not to be applied, however, where special circumstances exist which require an equitable interposition: Thus where fraudulent judgments have been obtained and executions issued thereon and it is sought to use the judgment and executions to remove the attached property from the custody and control of the officer holding under the attachment it is evident that nothing but the equitable arm of the court can prevent the consummation of the wrong. This is not an innovation of the general rule but a refusal to apply the rule under a state of facts demanding a different remedy, imperative in its nature. People ex rel. Cauffman v. VanBuren, 136 N. Y. 252. The earlier cases in New York base the equitable action of the court upon the ground that after the service of the attachment writ the person procuring it is no longer to be deemed a creditor at large but a creditor having a specific lien upon the goods attached. Reubens v. Joel, 13 N. Y. 488 (Code). Equity will assume jurisdiction of a bill for an injunction, filed by attaching creditors of an insolvent debtor, and restrain proceedings on execution against the property attached under a judgment against the debtor, in favor of another creditor, alleged to have been obtained by fraud, where all the material allegations of the bill, except fraud, are admitted. Heyneman v. Dannenberg, 6 Cal. 376. On a bill filed by an execution creditor, the court granted an injunction and appointed a receiver. Fuller v. Taylor, 6 N. J. Eq. 301.

to rescind a sale procured by means of fraudulent representations. It is doubtful, however, if in such case the seller can be regarded as a creditor in the ordinary sense of the term. The sale having been procured by fraud no title passed and the injunction is granted to prevent a disposal of the property until a hearing can be had. Moreover in a proceeding of this nature the jurisdiction is based upon the equitable nature of the remedy demanded in which injunction is only an incident, and the decree has no ancillary feature in it.[4] (c) It has been held that a creditor may enjoin the sale of the debtor's property under attachment against a third person before recovering judgment where there exists a lien or trust, and it is shown that there is no other adequate available remedy. In this case there is also an element of original chancery jurisdiction, and the remedy invoked is purely equitable in effects.[5] But the mere fact that a debtor is insolvent, and that without injunction the judgment would be lost is not a sufficient allegation that the creditor has no adequate legal remedy at law. A remedy may be ineffectual in its results and not inadequate in nature.[6]

§ 331. Injunction Against Conspiracy to Defraud. —Following the rule in regard to an injunction to restrain the disposition by the debtor of his property pending suit as set forth in the preceding sections, and based upon substantially the same principles, a court of equity will not interfere to prevent an insolvent debtor from alienating his property to avoid payment of an existing or prospective debt, upon allegations of conspiracy between the debtor and other persons. Carried to its logical results it would be but an evasion of the

[4] Cohen v. Meyers, 42 Ga. 46.

[5] Francis v. New York Commercial Co., 51 U. S. App. 663, 83 Fed. Rep. 769.

[6] Hall v. Joiner, 1 S. C. 186.

well established rules of equity under allegations apparently different but meaning the same in fact.[7]

§ 332. Injunction Against Creditors. —(a) Courts of equity having jurisdiction over the person of a creditor may enjoin such creditor from prosecuting a suit in a foreign jurisdiction if the suit is under the direction and control of a resident creditor where the debtor has made a general assignment for the benefit of creditors. The action of the creditor in such case is in defiance of a statute the scope and purpose of which being to place all creditors on an equality. The public policy of a State, as expressed in its insolvent laws, is not to be thus disregarded and set at naught. Nor has such a proceeding any commendable feature in it such as exists in the ordinary race of the diligent in the discovery of assets. But a court of equity will not enjoin a suit between the citizens of the State in which the court is sitting pending in another State unless a clear equity is made out requiring the interposition of the court to prevent a manifest wrong and injustice, or there is a clear waiver of the laws of the State where the parties reside.[8] (b) If, however, an assignment is

[7] Where a creditor whose debt was not due brought suit against his debtor and two other persons for a conspiracy to enable the debtor to dispose of his property fraudulently so as to hinder and defeat creditors in the collection of their debts an action will not lie. The authorities are clear that chancery will not interfere to prevent an insolvent debtor from alienating his property to avoid an existing or prospective debt. It is also clear a debtor has full dominion over his property and may convert one species of property into another, and it may be sold to a purchaser. Adler v. Fenton, 65 U. S., 407.

[8] Cunningham v. Butler, 142 Mass. 47; Dehon v. Foster, 4 Allen 545; Lawrence v. Batcheller, 131 Mass. 504. This is based upon the principle that the action of a creditor in causing an attachment in a foreign jurisdiction is for the purpose of defeating the operation of the insolvent law and to prevent a portion of the debtor's property from coming to the hands of the assignee to be distributed equally among creditors. Id. Compare Green v. Van Buskirk, 5 Wall. 307; 7 Wall. 139; Warner v. Jaffray, 96 N. Y. 248; Lawrence v. Batcheller, 131 Mass. 504. In Warner v. Jaffray, supra, the proceeding was based

made in a foreign State such assignment will not be enforced in another State to the prejudice of citizens of the latter State where property of the debtor may be located, and where the forum is which is called upon to act. This appears to be the established law of this country sustained by the great weight of authority, and yet it is based upon a principle strangely inconsistent with what ought to be the public policy, if not in fact in violation of constitutional guaranties. It would seem that in a great commercial country like this a voluntary transfer of property in good faith, and for a commendable purpose, should be recognized and enforced in every State. That the courts of a State should throw a shield of protection around their local or domestic creditors to the exclusion of foreign creditors, their equities being equal, has the appearance of shortsighted justice. It is also contrary to what has been the established law

upon a voluntary assignment in New York, and it was held that a citizen of New York by attachment proceedings in Pennsylvania, obtained a lien that would not be affected by the assignment, and not subject to injunction. The principle here announced is based upon the idea that a voluntary assignment is an act of the assignor to which the creditor can consent or not, as he prefers, and until he becomes a party to it he has a right to avail himself of any legal right the laws of another State give him. It appears to be conceded that the law would be otherwise in insolvency proceedings where the rights of parties are fixed by law. But it would seem that when the Constitution of the United States (Art. 4 § 1) which provides that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of ever other State, is given proper consideration, justice and equity would require that as between a foreign assignee and foreign creditor the rights of the assignee would be sustained. Cunningham v. Butler, supra. This is the rule as applied to receivers and creditors. Bugby v. Atlantic, M. & O. R., 86 Pa. St. 291. A citizen of Massachusetts knowing that his debtor had stopped payment and in anticipation of insolvency proceedings against him made an assignment of his claim to a citizen of New York, without consideration, and the later before insolvency proceedings were commenced brought suit in New York by attachment. On a bill filed by the assignee, in Massachusetts, the creditor was enjoined from prosecuting the suit in New York. Cunningham v. Butler, supra. As to the necessity of a strong case being made out to enjoin citizens from prosecuting a suit in a foreign State, see Carson v. Dunham, 149 Mass. 52.

of England for more than a century.[9] (c) The jurisdiction of the court over the subject matter, and over the person of the defendant gives the court power to make all needful orders concerning the property. A court of equity has jurisdiction in proper cases to protect the interest of parties and may restrain such acts as will tend to injure those whose rights are to be protected.[10] (d) And based upon the same principle a court of equity will enjoin the prosecution of an attachment suit in a foreign State against the debtor where an assignee in insolvency has been appointed in the State of the domicile of the debtor and creditor.[11] (e) Where a receiver has been appointed over the property of two railroad companies one of them will not be permitted to go into a foreign jurisdiction and institute suit for the purpose of tying up funds belonging to the receivership.[12] (f) A creditor who has proved his claim in an administration suit is not permitted to go into another jurisdiction to prosecute the same claim.[13] (g) Suit in another State to collect from an intestate estate

[9] Cunningham v. Butler, 142 Mass. 47; Burlock v. Taylor, 16 Pick. 335; Bentley v. Whittemore, 4 C. E. Green 462; Sanderson v. Bradford, 10 N. H. 260.

[10] A court of equity having jurisdiction of the defendant can compel or restrain a conveyance of his interest in personal or real property although such property is beyond the jurisdiction of the court. Carver v. Peck, 131 Mass. 291; Massie v. Watts, 6 Cranch. 148; Dehon v. Foster, 4 Allen 545; Sercomb v. Catlin, 128 Ill. 556.

[11] Dehon v. Foster, 4 Allen 545. And this doctrine has been extended in its application to a case of threatened insolvency. Cunningham v. Butler, 142 Mass. 47, but not when a lien by attachment has already been procured. Warner v. Jaffray, 96 N. Y. 248. A winding up order of an insolvent corporation is a suspension of all proceedings against the corporation wherever pending, and gives a right of injunction. Re International Pulp & Paper Co., L. R., 3 Ch. Div. 594; Exparte Tait., L. R., 13 Eq. 311.

[12] Vermont & C. R. Co. v. Vermont Cent. R. Co., 46 Vt. 792. The receiver's right to enjoin a foreclosure in a foreign State on receivership property has been denied. Walton v. Grand Belt Copper Co., 56 Hun, 211; Moor v. Anglo-Italian Bank, L. R., 10 Ch. Div. 681.

[13] Hope v. Carnegie, L. R., 1 Ch. 320; Graham v. Maxwell, 1 MacN. & G. 71; Beauchamp v. Huntley, Jac. 546; Eustace v. Lloyd, 25 Week. Rep. 211. This would probably not be so if the

a claim barred by the statute of limitations of the domicile of the decedent but which is not barred by the statute of the State where brought will not be enjoined.[14]

(h) Where a suit by creditors of the same State as the debtor is brought in a foreign State in order to evade the exemption laws of the State of the debtor's residence its prosecution may properly be enjoined.[15]

creditor was of a foreign domicil and had not submitted his claim to administration. Re Boyse, L. R., 15 Ch. Div. 591; Carron Iron Co. v. Maclaren, 5 H. L., Cas. 416.

[14] Thorndike v. Thorndike, 142 Ill. 450; cf. Mitchell v. Shook, 72 Ill. 492; Mineral Point R. Co. v. Barron, 83 Ill. 365; Wabash R. Co. v. Dougan, 142 Ill. 248. For a note covering the authorities touching injunctions against suits in foreign jurisdictions, see 21 L. R. A. 71; Carter v. New Orleans, 19 Fed. Rep. 659. For a valuable annotation of the law relating to injunctions against judgments for want of jurisdiction or judgments which are void see note to Texas Railway Co. v. Wright, 31 L. R. A., p. 200.

[15] Mumper v. Wilson, 72 Ia. 163; Hager v. Adams, 70 Ia. 746; Teager v. Landsley, 69 Ia. 725; Wilson v. Joseph, 107 Ind. 490; Keyser v. Rice, 47 Md. 203; Zimmerman v. Franke, 34 Kan. 650; Snook v. Snetzer, 25 Ohio St. 516; Illinois Central R. Co. v. Smith, 70 Miss. 344; Wabash Western R. Co. v. Seifert, 41 Mo. App. 35; Moton v. Hull, 77 Tex. 80; Allen v. Buchanan, 97 Ala. 399. But see Griffith v. Langsdale, 53 Ark. 71, where the parties were domiciled in different States.

CHAPTER XIV.

RECEIVERSHIP.

§ 350. Appointment of—General.
(1) Power to appoint unquestioned.
(2) Exercise of power in discretion of court.
(3) Necessity for, how to be shown.
(4) Basis of appointment must appear in each case.
351. Appointment in discretion of court.
352. Prerequisites to appointment.
(a) Actual bona fide indebtedness.
(b) In case of corporation receiver, requirements.
(c) In case of receiver of foreign corporation.
(d) Application to proper court.
(e) Location of property within jurisdiction.
(f) Jurisdictional facts appearing.
(g) Danger of loss must appear.
353. Statutory jurisdiction not exclusive.
354. Under what circumstances appointed.
(a) Misconduct of administrators, etc.
(b) Preservation of property.
(c) Where assignee insolvent.
(d) Deceased partner's estate.
(e) Fraudulent assignment.
(f) Where legal title involved.
355. Receiver in action to rescind sale for fraud.
356. Receiver in attachment proceedings.
357. Receiver in assignments.—Corporations.
358. Receiver in cases of fraudulent transfers.
359. Receiver in partnership matters.
360. Receiver in supplementary proceedings.
361. Receiver in creditor's bills.
362. Receiver in building and loan associations.
363. Appeal from order appointing.
364. Powers of receiver.
365. Powers of receiver in fraudulent conveyances.
366. Powers of receiver, miscellaneous.
367. Powers of receiver, when he has not.
(a) Foreign to set aside fraudulent conveyance.
(b) To attack validity of judgment.
(c) To annul contracts of corporation, when.

368. Power to sue.
369. Power to sue in foreign jurisdiction.
370. Suits against receiver.
371. Liability of receiver.
372. Title of receiver in debtor's property.
373. Possession of receiver.
374. Right of creditor to collect unpaid subscription.
375. Claims against receiver and receivership funds.
376. Defense of receiver to claims.
377. Reservation of rights of creditor in presenting claim.
378. Time in which claim must be presented.
379. Validity of claims to receivership funds.
380. Claims against funds not allowed.
381. Claims entitled to preference.
382. Claims not entitled to preference.
383. Expenses against receivership funds.
384. Jurisdiction of court over property and parties.
385. Power of court over receiver and parties.
386. Receivership in bankruptcy.
(a) Appointed after adjudication, when.
(b) Where assignee in possession.
(c) Where receiver already appointed in State court.
(d) Rule as to concurrent jurisdiction.
(e) Effect of possession of receiver in.
(f) Receiver entitled to rents, when.
(g) Receiver's right to money in marshal's hands.
(h) Corporation in hands of receiver is involuntary bankrupt.
(i) Receiver proper representative of bankrupt.
(j) Cannot sue for property sold in fraud of act.
(k) Right to sue in foreign jurisdiction.
(l) He as receiver of creditor may prove debt.
(m) Title good as against trustee, when.
(n) Title good until impeached.
(o) Cannot be receiver and trustee.
387. Distribution of receivership funds.

Section **350. Appointment of—General.**—It is common practice under a creditor's proceeding to appoint a receiver over the property and effects of the debtor. The necessity for the appointment in all cases depends upon the condition of the property and the preservation of the same pending the litigation. The powers, duties and liability of the receiver appointed

in this class of suits are not essentially different from those pertaining a receivership in other cases. A few of the general and most important rules applicable to the subject are stated:

(1) The power of a court of equity, or a court exercising chancery jurisdiction, in a proper case has been unquestioned almost since the first establishment of this branch of remedial jurisprudence.

(2) The power to appoint being granted, the exercise of this power rests in the sound judicial discretion of the chancellor, based upon the recognized and established principles of law and equity and the practice of the court.

(3) Whether the necessity exists is to be determined from the foundation laid therefor in the allegations of the bill or petition, or such other method of bringing the matter before the court as may be consistent with its established rules and practice.

(4) The grounds upon which the appointment is to be made must of course depend upon the nature of the proceeding, the objects sought thereby, and the peculiar facts and circumstances of each case in which the application is made.

§ **351. Appointment Rests in Discretion of Court.**—The appointment of a receiver, as we have elsewhere seen, is not a matter of absolute right, but rests in the sound judicial discretion of the court, before whom the application is made, and usually the appellate court will not interfere with the appointment unless it clearly appears that there has been an abuse of this discretion. It has been said that in a creditor's proceeding the appointment is a matter of course, but this pre-supposes a case presented in which the necessity for the affirmative action of the court is apparent, which is most usually the case in actions of this nature, whether they relate to the recovery and application of

property fraudulently conveyed or transferred, mortgaged or concealed by the debtor to the injury of the creditor, or the sequestration of the property of an insolvent corporation.

It is not in all cases, however, even where the facts and circumstances make such a case that a court of equity would be justified in appointing a receiver, that it will do so. Thus if the contest is one that relates to a fund which the court, by reason of its jurisdiction over the parties, may impound or bring into court for safe keeping until the litigation is ended, it may properly do so.[1]

Sometimes the legislature, as in Wisconsin, has placed a limitation on the right to an action for the appointment of a receiver by requiring the aggregate of plaintiff's claim to exceed a certain amount.[2] But even if this were not statutory it would seem that a judicious exercise of the discretion vested in the court, or chancellor, would dictate a refusal to appoint where the plaintiff's judgment is for a small amount.

The rule is well nigh universal that a simple contract creditor has no right to invoke the aid of a court of equity in the appointment of a receiver. The reason for this rule is that the court in the absence of a judg-

[1] A broad discretion is lodged in the circuit court as to the appointment of a receiver in cases where executions have been returned unsatisfied. Dutton v. Thomas, 97 Mich. 93; Rankin v. Rothschild, 78 Mich. 10. A verified answer to a creditors' bill, in opposition to a motion for the appointment of a receiver, may be treated as an affidavit, to which the complainant may file counter affidavits. Rankin v. Rothschild, 78 Mich. 10. The appointment is not to be questioned in a collateral proceeding. Davis v. Shearer, 90 Wis. 250; Re Atty. Gen. v. Guardian Mut. L. Ins. Co., 77 N. Y. 272. The court may properly refuse to appoint a receiver in a contest over a fund which may be brought into court. Continental Nat'l Bank v. Myerle, 24 App. Div. 154; 48 N. Y. Supp. 718.

[2] Under the Wisconsin Laws of 1897, ch. 334, a proceeding cannot be instituted for the appointment of a receiver of an insolvent debtor where the aggregate claims of the plaintiff are less than $200, exclusive of costs. Woodard & Stone Co. v. Milnes, 101 Wis. 329.

ment in most cases is unable to know whether legal remedies have been exhausted, or not. Besides as to the existence of an indebtedness, and the amount due, from the debtor, if anything, is purely a matter of legal adjudication in which a jury trial is a matter of constitutional guarantee.[3]

§ 352. Prerequisites to Appointment.— (a) It is equally true that there must be an actual *bona fide* indebtedness due and owing from the debtor. Thus a creditor who has accepted another party as payer in lieu of the debtor is not entitled to a receiver. And where his only claim against a debtor corporation is a dividend which has been declared it is not sufficient.[4]

(b) To justify the appointment of a receiver of the assets of a corporation, in the absence of statutory grounds, at least four things should appear: (1) the creditor's claim against the corporation must be valid; (2) that there are assets to be reached that are applicable to the payment of the claim; (3) that the plaintiff has exhausted all adequate legal remedies, and (4) that there is danger of loss if a receiver be not appointed.[5]

[3] A simple contract creditor has no right to make application for appointment of a receiver upon an allegation of insolvency and the removal of its property from the state by a corporation in the absence of statutory authority. Smith-Dimmick Lumber Co. v. Teague (Ala.) 24 So. 4. Nor has a creditor who has accepted another party as payor of his claim. Tenney v. Ballard W. & B. Hat Co., 17 Tex. Civil App. 144. On the return of an execution no property found a judgment creditor may apply for a receiver. M. V. Monarch Co. v. Bank of Hardinsburg (Ky.), 44 S. W. 956.

[4] A stockholder who claimed a dividend due him is not such a creditor as can apply for the appointment of a receiver. Leary v. Columbia River & P. S. N. Co., 82 Fed. Rep. 775; Tenney v. Ballard, W. & B. Hat Co., Supra.

[5] To justify the appointment of a receiver of a corporation on the application of a creditor it should appear that his claim is valid, that there are assets to be reached applicable to the payment of his claim, and that he has exhausted his legal remedies, and there is danger of loss. Falmouth Nat'l Bank v. Cape Cod Ship Canal Co., 166 Mass. 550. Under Mo. Rev. Stat., 1889, secs. 2790, 2792, the appointment of a receiver is proper where it appears that the officers have appropriated the funds of the com-

(c) The appointment of receivers for corporations is not confined to domestic corporations, but where proper grounds for the exercise of jurisdiction exist a receiver may be appointed over a foreign corporation, as where it has fraudulently disposed of its property in the state where the application is made to the injury of creditors. Of course, in such a case, the granting of the order is subject to the same prerequisite essentials that are required in the matter of a domestic corporation.[6]

(d) The application for the appointment must in all cases be addressed to the proper court exercising jurisdiction in receivership matters under facts constituting jurisdictional basis.[7]

(e) And the location of the property within the jurisdiction of the court to which application is made is a proper jurisdictional element to be considered.[8]

pany to their own use. Glover v. St. Louis Mutual Bond Invest. Co., 138 Mo. 408. A receiver of a corporation may be appointed on the application of a creditor where it appears that the corporation is insolvent and has executed an assignment under the Washington code of procedure, sec. 826. Oleson v. Bank of Tacoma, 15 Wash., 148.

[6] A resident creditor of a foreign insolvent corporation may have a receiver appointed of the assets within his state. Security Sav. & L. Ass'n v. Moore, 151 Ind. 174. Sections 58 and 59, ch. 53, W. Va. Code, authorize the circuit courts to appoint receivers to wind up the affairs of foreign corporations having property within that state and having contracted debts there. Swing v. Bently & Gerwig Furn. Co. (W. V.) 31 S. E. 925. A judgment against the corporation is a prerequisite to the appointment of a temporary receiver for an insolvent corporation. United States Glass Co. v. Levett, 53 N. Y. Supp. 688. A judgment creditor of a foreign fraudulent corporation may apply for a receiver of an insolvent that has fraudulently disposed of its property in a state where the application is made. Dreyfuss v. Charles Seale & Co., (N. Y.) 18 Misc., 551. 41 N. Y. Supp. 875.

[7] Application for the appointment of a receiver in the matter of a deceased person's estate is properly made to the probate division under the English Judicatory Act of 1873. In re Parker, 54 L. J. Chancery, 694. The appointment of a receiver of a railroad in Florida in a suit in New York is improper. Kittel v. Augusta T. & G. R. Co., 78 Fed. Rep. 855.

[8] The court has no power to appoint a receiver over property out of its jurisdiction. Baltimore B. & L. A. v. Alderson, 90 Fed. Rep., 142.

(f) In creditor's proceedings where the jurisdictional facts are sufficient the appointment of a receiver is a matter of right.[9]

(g) There must be a necessity for the appointment, such as danger of loss or other injury to the plaintiff. Thus a receiver will not be appointed for a corporation on the application of a creditor where it has been dissolved, and no insolvency is shown and where its trustees are honest, faithful and competent, and no mismanagement or waste appears.[10]

§ **353. Statutory Jurisdiction Not Exclusive.**—Where by statute a state officer is authorized to file a bill in equity and procure the appointment of a receiver of an insolvent bank it does not take from a judgment creditor the right unless the statutory jurisdiction is clearly intended to be exclusive.[11]

§ **354. Under What Circumstances Appointed.**—It is a proper exercise of the judicial functions of a court of equity to appoint a receiver:

[9] The appointment of a receiver on the application of a judgment creditor is a matter of right. In re Manchester & M. R. Co., L. R. 14 Chancery D., 645. The appointment of a receiver on the application of a creditor not in an auxiliary proceeding but in a proceeding based upon a complaint where the appointment is the sole relief, is not authorized by the common law practice nor by the Indiana statutes. State v. Union Nat'l Bk., 145 Ind. 537.

[10] The appointment will not be made on the application of a creditor who has been tendered the amount due him. Miller, Nixon & Co. v. Southern Land & L. Co., 53 S. C. 364. The application for the appointment of a receiver by a simple contract creditor based only on allegations of an insolvency and a removal of property will not be granted. Smith-Dimmick Lumber Co. v. Teague (Ala.), 24 S. 4. A receiver will not be appointed on the application of a creditor of a corporation which has been dissolved in the absence of insolvency and where the statutory trustees are faithful and competent and there is no mismanagement and waste. Weatherly v. Capital City Water Co., 115 Ala. 156.

[11] The fact that a state auditor is given power to file a bill and procure the appointment of a receiver of an insolvent bank does not preclude a judgment creditor from doing the same. People v. Globe Sav. Bk., 14 Nat'l Corp. Rep. 723. The statutory remedy in N. Carolina given by ch. 26, secs. 5 and 6 of Rev. Code is exclusive and ousts the former equity jurisdiction in the appointment of receivers on the application of creditors. Von

(a) In the administration of an estate where the conduct of the administrator is such as to embarrass the collection of debts.[12]

(b) Where it is necessary to preserve the property which is sought to be reached. The property may be of such character that a chief factor in its value is that it shall be kept in *statu quo*, or as a going concern, or it may be of such nature as to require constant care and attention.[13]

(c) Where the debtor has made an assignment and the assignee is insolvent.[14]

Glahn v. DeRosset, 81 N. C. 467.

[12] If an administrator of an estate hinders and embarrasses the collection of the debts of the estate, a court of chancery may appoint a receiver to collect in the assets, and having acquired jurisdiction, may settle the estate. DuVal v. Marshall, 30 Ark. 230.

[13] A receiver is proper when it is necessary to preserve the property sought to be reached under a creditor's bill. Monroe Bk. v. Schermerhorn, Clark's Ch. 214; Bloodgood v. Clark, 4 Paige Ch. 575; Austin v. Figueira, 7 Paige Ch. 56. The answer of the defendant that he has no property of any kind will not prevent the appointment of a receiver. Fuller v. Taylor, 6 N. J. Eq. 301. The appointment of a receiver under the New Jersey statutes of 1845 and 1864 relative to the application of the choses in action of a debtor to the payment of the judgment of a creditor depends upon whether there is any property of the debtor held in trust for the debtor. Whitney v. Robbins, 17 N. J. Eq. 360. In a petition for the appointment of a receiver of an insurance company an allegation that the assets are insufficient to justify the continuance in business and to pay its debts and liabilities is equivalent to an allegation that its further continuance in business would be hazardous to the persons insured therein or to the public as required by the statute. Rand, McNally & Co. v. Mutual Fire Ins. Co., 58 Ill. App. 528. Where a bill is filed and served to sequestrate the property of an insolvent corporation and appoint a receiver, and an order made and served requiring defendants to show cause why a receiver should not be appointed and forbidding interference with the property pending the motion, it was held to be an equitable levy without the officers taking manual possession. In such case the appointment of a receiver by another court of coordinate jurisdiction is improper. Northwestern Iron Co. v. Land & River Imp. Co., 92 Wis. 487; cf Bragg v. Gaynor, 85 Wis. 468; Heidritter v. Elizabeth Oil Cloth Co., 112 U. S. 294; Belmont N. Co. v. Columbia I. & S. Co., 46 Fed. Rep. 336; Tomlinson, etc., Co. v. Sholto, 34 Fed. Rep. 380. A receiver takes possession of property subject to all valid liens at the time of his appointment. Mulcahey v. Strauss, 151 Ill. 70.

[14] The appointment of a receiver is proper when the debtor has made an assignment and the assignee is insolvent. Haggarty v. Pittman, 1 Page Ch. 298.

(d) Where it is sought to reach the judgment debtor's interest in a deceased partner's estate.[15]

(e) Where the debtor has made an assignment with the intent to hinder, delay and defraud his creditors thereby. Fraudulent assignments as to creditors are (1) where the instrument provides for the assignor's continuation in business; (2) where he reserves to himself a benefit in the distribution; (3) where his retaining possession is provided for; (4) where it provides for the payment of individual debts from partnership assets; (5) intentional omission of assets; where it includes fictitious liabilities. Where the assignment is free from fraud on the part of the assignor a receiver may be appointed (1) where the assignee refuses to take possession or refuses to accept his duties; (2) where he is guilty of gross mismanagement of the property or funds.[16]

(f) Courts of equity are not disposed to interfere by the appointment of a receiver in the matters of real estate where the title and the possession are in third persons. This grows out of the fact that courts of equity do not, as a rule, undertake to determine between contestants the legal title to real estate. In such cases, therefore, in order to secure the appointment of a receiver, the plaintiff must establish his right by a clear and satisfactory showing of title to the property, a lien thereon or that it constitutes a special property or fund to which he has a right to resort to satisfy his judgment.[17]

§ 355. Receiver in Action to Rescind for Fraud. —While not strictly a creditor's proceeding but taking

[15] On a bill to reach the judgment debtor's interest in his deceased father's estate the appointment of a receiver is proper. McArthur v. Hoysradt, 11 Paige Ch. 495.

[16] Smith on Receivership, Sec. 149 (a) (b) and notes 2, 3 and 4, and cases cited.

[17] Mays v. Rose Freeman's Chy. (Miss.) 703; Vanse v. Woods, 46 Miss. 120; Lloyd v. Passingham, 16 Ves. Jr. 59.

somewhat of its nature, a suit may be maintained by the seller of goods to rescind the sale, based upon the fraud of the purchaser, and a receiver be appointed.[18]

§ **356. Receiver in Attachment Proceedings.**—As elsewhere seen a creditor's suit will, in some jurisdictions, be maintained in aid of an attachment lien where the remedy by such action appears to be inadequate, and so, in such a case, a receiver may be appointed, but it must clearly appear that the attachment is inadequate and inefficacious. Usually one of the grounds of attachment is that the debtor has fraudulently conveyed or transferred his property within a specified time, and the property is in *custodia legis* and the necessity of a receiver not always apparent.[19]

§ **357. Receiver in Assignment.**—The general creditors of an assignor may intervene in an attachment against the assignor within the statutory period and pray for a distribution of the proceeds of the property sold under the direction of the court among all the assignor's creditors, and pray for the appointment of a receiver to administer the trust where the assignment appears to be invalid, or where the assigned property becomes a trust fund by reason of a preference in the assignment, rendering the same invalid.[20]

And where the assets of an assigned estate have been transferred to a person who has bought up claims

[18] The appointment is proper on the application of the seller of goods in an action brought by him to rescind the sale. Exchange Bk. of Macon v. H. B. Claflin & Co., 100 Ga. 640. In an action to rescind the contract for fraudulent misrepresentations the appointment of receiver is proper. Gibbs v. David, L. R. 20 Equity, 373.

[19] The general rule is that a receiver will not be appointed in an attachment proceeding unless the attachment is inadequate and inefficacious. Pearce v. Jennings, 94 Ala. 524; but see Sackhoff v. Vandegrift, 98 Ala. 192; Gassaway v. Heidenheimer (Tex.) 37 S. W., 343.

[20] Hockaday v. Drye (Ok.), 54 Pac. 475.

against the estate and who is to transfer the undisposed property after reimbursing himself in an agreed sum to persons named and the insolvency proceeding discontinued, a receiver will be appointed.[21]

The usual grounds for the appointment of a receiver of a corporation on the application of creditors are mismanagement of the affairs of the corporation by the corporate officers, or fraudulent disposition of its property and effects.[22]

§ 358. Appointment in Cases of Fraudulent Transfers. — It is a common practice in equitable proceedings, either creditors' bills or bills in the nature of creditors' bills, and supplementary proceedings to appoint a receiver where the property is of such nature as to render it necessary, or to facilitate the action of the court. The appointment is peculiarly appropriate if the transfer consists of personal property, where possession is an important factor of ownership, and where concealment or removal is so easily accomplished. The exercise of this power pending an examination as to the legal title to real estate, however, is always with greatest of caution on the part of the chancellor.[23]

[21] Warren v. Howe, 1 Chicago L. J. Weekly, 177.

[22] A receiver may be properly appointed on the application of creditors on the ground of the mismanagement and disposition of corporate property. U. S. Rubber Co. v. American Oak Leather Co., 82 Fed. Rep. 248. In a suit by a creditor to set aside a conveyance by a corporation a receiver may be appointed and authorized to sell the property and franchises for the purpose of preventing a forfeiture. Boston Invest. Co. v. Pacific Short-Line Bridge Co., 104 Ia. 311. Under a creditor's bill based on the judgment against an insolvent corporation rendered upon notes executed by the corporation to a director while solvent for money actually loaned the corporation, a receiver will not be appointed, although the corporation became insolvent before judgment. Hudlun v. Blakeslee, 70 Ill. App. 664.

[23] When a bill is filed to set aside a conveyance by a judgment creditor in behalf of himself and all other creditors a receiver may be appointed. Shand v. Hanley, 71 N. Y. 319. The ordinary proceeding where a transfer is fraudulent is to ap-

The equitable jurisdiction of a court may be invoked and a receiver appointed on the application of a creditor where the debtor has fraudulently conveyed his property to the injury of plaintiff as a creditor.[24]

And so where the debtor, with the intention of hindering, delaying and defrauding his creditors, has placed a fraudulent mortgage on his property, it is, as in the case of a conveyance absolute, a proper ground for appointment.[25]

point a receiver and order him to sell and dispose of the property to the best advantage and pay the creditor, and not render a money decree. McLean v. Cary, 88 N. Y. 391.

[24] A receiver is properly appointed in an action involving the fraudulent character of a deed made by an executor and sole heir to a sister in settlement of an alleged debt due her. Brown v. Stanley, 105 Ga. 469. A receiver may be properly appointed in an action by a judgment creditor attacking a conveyance as fraudulent, which the judgment debtor has only an equity of redemption in the land. Freeman v. Stuart, 24 So. 31 (Ala.). In a proceeding by creditors, to set aside a conveyance of real property as fraudulent, a receiver will not be appointed where it appears that the buildings and improvements on the property are properly cared for by the defendant who is solvent and capable of paying the rents received by him during the progress of the suit. Spokane v. Amsterdamsch, Trustees Kantoor, 18 Wash 81. Under Ohio Rev. Stat. Sections 5483-4, a receiver will be appointed where a debtor has fraudulently or suspiciously transferred his property to another person who is to hold it where it appears that there is danger of the property being misapplied. Hayes v. Moore, 5 Ohio N. P. 220. A receiver may be appointed to take charge of property which has been transferred by a failing debtor for purpose of defrauding his creditors. Bomar v. Means, 53 S. C. 232. The receiver may bring an action to set aside a transfer made by an insolvent partnership intended to be preferential. Stiefel v. Berlin, 45 N. Y. Supp. 746.

[25] In an action by judgment creditors to subject to the lien of their judgments personal property in the possession of the debtor and claimed to have been fraudulently mortgaged a receiver will be appointed, notwithstanding it appears that a remedy at law exists if such remedy is not exclusive. Hirsch v. Israel, 106 Ia. 498. The fraudulent mortgaging of personal property by a judgment debtor is a sufficient cause for the appointment of a receiver. Hirsch v. Israel, 106 Ia. 498. An order appointing a receiver will not be set aside where the debtor in his application does not deny the allegations of the bill charging the deed to have been made to hinder, delay and defraud creditors, and to secure a fictitious debt. Lyle v. Com. Nat'l. Bank, 93 Va. 487. A receiver may be appointed in a creditor's action to take charge of property which has been fraudulently mortgaged by the debtor. Badger v. Sutton, 30 App. Div. 294; 52 N. Y. Supp. 16.

§ 359. Appointment in Partnership Matters.—A receiver may be appointed over the property and effects of a partnership on the application of a creditor, (a) where by reason of disagreement between the partners in the management of the business a loss is likely to ensue;[26] or (b) where each of two partners has undertaken to make an assignment to different assignees;[27] (c) in supplementary proceedings where a receiver has already been appointed in an action to dissolve the partnership.[28]

§ 360. Receiver in Supplementary Proceedings.—In supplementary proceedings and proceedings in aid, which, in scope and purpose, are analogous to creditors' bills, provision is usually made by statute for the appointment of a receiver, and where no such provision is made the rules and practice in chancery prevail. Receivers appointed in this class of proceedings are regarded as the representative of creditors and as such representative the scope of their power is measured to some extent by the rights pertaining to creditors, and their power to impeach the debtor's fraudulent acts and transactions is generally conceded.[29]

[26] Where unsecured creditors are interested in partnership funds and the partners are unable to agree, a receiver will be appointed. Rolfe v. Burnham, 110 Mich. 660.

[27] Where each partner undertakes to make an assignment to different assignees a receiver will be appointed. Fox v. Curtis, 176 Pa. 52.

[28] In supplementary proceedings against the firm it is proper to appoint a receiver of the firm assets where a receiver has already been appointed in another action to dissolve the firm. Price v. Price, 21 App. Div. 597.

[29] Underwood v. Sutcliffe, 77 N. Y. 58; Bostwick v. Menck, 40 N. Y. 383; Porter v. Williams, 9 N. Y. 142; Dollard v. Taylor, 1 Jones & S. 496; Barton v. Hosner, 24 Hun, 467; Osgood v. Laytin, 48 Barb. 463; 5 Abb. Pr. N. S. 1; Miller v. Mackenzie, 29 N. J. Eq. 291; Hamlin v. Wright, 23 Wis. 491; Dunham v. Byrnes, 36 Minn. 106. But see Higgins v. Gillesheiner, 26 N. J. Eq. 308. Inasmuch as the receiver is the representative of creditors his proceedings to subject the debtor's property to the payment of debts will prevail only to so much thereof as may be required to pay the creditors. He has no concern with the debtor's fraudulent transfers beyond this. Bostwick v. Menck, 40 N. Y. 383.

Generally a receiver is proper in supplementary proceedings or proceedings in aid of execution, where an order for an examination of the debtor has been served,[30] and particularly so where it is necessary to preserve the property of the debtor.[31]

§ 361. Receivership in Proceedings by Creditor's Bills.—A receiver may be appointed in a proceeding by creditor's bill where it is necessary in order that the lien secured by the filing of the bill may be preserved and effectuated.[32]

While he has the same right as creditors he has no extra power in his official capacity beyond what they possessed. Thus if the creditors by waiver or ratification have placed themselves in a position in which no relief could be granted the receiver will not be entitled to relief. Kennedy v. Thorp, 51 N. Y. 174. In such case the right of the receiver to recover is confined to such creditors as have not estopped themselves from proceeding had no receiver been appointed. Mandeville v. Avery, 124 N. Y. 376; Haynes v. Brooks, 116 N. Y. 487; Wright v. Nostrand, 94 N. Y. 31; Becker v. Torrance, 31 N. Y. 631; Van Alstyne v. Cook, 25 N. Y. 489; Porter v. Williams, 9 N. Y. 142; Metcalf v. Del Valle, 64 Hun, 245; 137 N. Y. 545; Olney v. Tanner, 10 Fed. Rep. 101; 18 Do. 636. The only power of the court in a proceeding supplementary to execution as to an action by the judgment creditor is to make an order authorizing the judgment creditor to institute an action in the proper court to recover indebtedness due the judgment debtor and forbid a transfer pending the action. High v. Bank of Commerce, 103 Cal. 525.

[30] The appointment of a receiver is proper in supplemental proceedings, although attachment proceedings are pending. Hanson v. Tripler, 3 Sandf. Super. Ct. 733. The appointment of a receiver is proper in supplemental proceedings in New Jersey after an order for examination is served. Colton v. Bigelow, 41 N. J. L. 266. See also Holbrook v. Orgler, 40 N. Y. Super. Ct. 33; 49 Howard's Practice, 289. A debtor against whom a creditor's bill is pending may be required to appear before the Circuit Court commissioner for examination. Central Nat'l Bank v. Graham, (Mich.) 76 N. W. 1042.

[31] The only purpose of the appointment of a receiver in supplemental proceedings is to preserve the property. Rodman v. Harvey, 102 N. C. 1. The receiver of a corporation in supplemental proceedings being in possession of its assets is a necessary party to an action against the corporation for injuries. Moore v. Los Angeles Iron & S. Co., 89 Fed. Rep. 73.

[32] Where a lien is secured by the filing of a creditor's bill and it is averred that the appointment is necessary in order to preserve and effectuate the lien by reason of the insolvency of the debtor and the disposition of the property by the defendant, a receiver may be appointed. Heard v. Murray, 93 Ala., 127; Moritz v. Miller, 87 Ala., 331; Thompson v. Tower Mnfg. Co.,

§ **362. Receivership in Building and Loan Associations.**—As a general rule a receiver in the matter of building and loan associations is appointed on the application of stockholders, who base their application upon their rights as members, rather than the relationship of debtor and creditor. Yet the element of trusteeship is frequently prominent in such cases, as well as mismanagement, and a receivership proper and essential to the proper winding up of their business.[33]

§ **363. Appeal — From Order Appointing — Allowance of Claims.**—As a general rule an appeal from an order appointing a receiver will not be reversed by the upper court where the evidence on which the appointment was based is conflicting;[34] or where the property of the debtor is already in the hands of receivers; [35] or where the appointment was made without objection in the trial court.[36] A receiver has no right to appeal from an order or decree giving certain claims a preference over a mortgage.[37] But creditors of an in-

87 Ala. 733. The appointment of a receiver is proper after the filing of creditor's bill against a judgment debtor. Central Nat'l Bank v. Graham, (Mich.) 76 N. W. 1042. See also Runals v. Harding, 83 Ill. 75.

[33] In a proper case a receiver may be appointed over building and loan associations. Hatfield v. Cummings, (Ind.) 50 N. E. 817; Com. ex rel McCormick v. Pennsylvania Bldg. & L. Asso., (C. P.) 20 Pa. Co. Ct. 589; Illinois Bldg. & L. Asso. v. People, 173 Ill. 638; Sjoberg v. Security Sav. & L. Asso., 75 N. W. (Minn.) 1116; Powers v. Blue Grass Bldg. & L. Asso., (C. C. D. Ky.) 86 Fed. Rep. 705.

[34] The court of appeal will not interfere with the appointment of a receiver where the evidence is conflicting. Cameron v. Groveland Improv. Co., (Wash.) 54 Pac. 1128.

[35] On a bill filed by creditors to reach the property of their debtor where such property is already in the possession of a receiver and the validity of the appointment is attacked, the appellate court will not appoint or direct the appointment of a receiver upon reversing a judgment dismissing the bill. Albion Malleable Invest. Co. v. First Nat'l Bk., (Mich.) 74 N. W. 515.

[36] A company which appears on a rule to show cause why a receiver should not be appointed and makes no objection to the appointment cannot claim on appeal that the appointment was error. New York Life Ins. Co. v. Davis, 94 Va. 427.

[37] The receiver has no right to appeal from a decree giving certain claims preference over a mortgage. Bosworth v. Terminal R. A., 53 U. S. App. 302; 80 Fed. Rep. 969.

solvent corporation whose assets, in part, consist of stock in another corporation may appeal from an order allowing claims against the latter company.[38]

§ **364. Power of Receiver.**—The usual source of the receiver's power is to be found in the order of his appointment. At the time of his appointment the purpose of the appointment, the duties he is expected to perform, and the general nature of the receivership, dictate the scope of the order and the power expedient to confer upon him. If the order is general, or not considered comprehensive enough and the receiver is in doubt as to his power, the court is at all times open to him for instruction. Generally the receiver has power to compel by action the transfer to him of the funds and securities to which he is entitled, and to which he has title.[39]

The power of the receiver is derived from three sources, (1) the general rules of practice of courts of chancery or courts exercising chancery jurisdiction; (2) the order of appointment, and (3) in many cases statutory power is conferred.

§ **365. Power of Receiver in Fraudulent Conveyance.**—The question has sometimes been raised as to the right of a receiver of the debtor to disaffirm and have set aside the fraudulent conveyances and transfers of the debtor. Upon this question there is not entire harmony in the decisions, and this lack of harmony grows out of two views of the receiver's relationship. He is considered so far as the debtor's property is concerned as the representative of the debtor, taking title only to such property as the debtor held at the time of

[38] Blake v. Domestic Mnfg. Co., (N. J. Eq.) 38 Atl. 241.

[39] The receiver may by action compel the transfer to him of funds and securities to which he is entitled under an accounting and to which the receiver has acquired title. Armstrong v. McLean, 153 N. Y. 490; Farwell v. Importers' Nat. Bk., 90 N. Y. 483.

the appointment, and that as to fraudulent transfers, the title having passed prior to the appointment, the receiver has no right to meddle therewith. On the contrary, the receiver is considered by other courts as being the appointee of the court, a part of the machinery of the court, and *ipso facto* the representative of the creditors, and therefore may legally do and perform all acts in the interest of creditors which they might do but for the appointment of the receiver. It is believed that the great weight of authority as well as sound reason is to the effect that a receiver has such right, and that the exercise of this right by him is in consonance with the general trend of equitable relief and the growing scope and power of receiverships in general and their efficiency and utility in the administration of equitable remedies. The position thus assumed has particular significance and relevancy in its application to insolvent corporations.[40]

The receiver of the property of an insolvent debtor and particularly if such debtor be a corporation, has the right, under the direction of the court, to impeach and annul in the interest of creditors all fraudulent conveyances and covinous transfers of the debtor's property.

§ 366. Powers of Receiver—Miscellaneous.—A receiver has power to avoid the transfer of goods by way of mortgage, made by a corporation, where the mortgage was not recorded within the time required by the statute.[41]

[40] Hamlin v. Wright, 23 Wis. 491; Erdall v. Atwood, 79 Wis. 1; Dunham v. Byrnes, 36 Minn. 106; Olney v. Tanner, 10 Fed. Rep. 101; 18 Do. 636; Miller v. Mackenzie, 29 N. J. Eq. 291; Higgins v. Gillesheiner, 26 N. J. Eq. 308; Mandeville v. Avery, 124 N. Y. 376; Stephens v. Perrine, 143 N. Y. 476; Pittsburgh Carbon Co. v. McMillin, 119 N. Y. 46; Kennedy v. Thorp, 51 N. Y. 174; Porter v. Williams, 9 N. Y. 142; Heineman v. Hart, 55 Mich. 64; Glenny v. Langdon, 98 U. S. 20; Trimble v. Woodhead, 102 U. S. 647; Moyer v. Dewey, 103 U. S. 301.

[41] Franklin Nat'l Bank v. Whitehead, 149 Ind. 560.

The receiver in a supplemental proceeding may attack the fraudulent transfers of the debtor where the purpose was to give a preference. (See statute.)[42]

The power of a receiver conferred by N. Y. Stat., 1858, ch. 314, amended by N. Y. Laws, 1894, ch. 740, to follow specific property conveyed in fraud of creditors and recover its value, is not authority for the receiver in supplemental proceedings to sue at law, based on a fraudulent conspiracy.[43]

The receiver has power to avoid the assignment of a chose in action,[44] but has no power to take forcible possession of property in the hands of a third person;[45] nor has the receiver of an insolvent bank power to allow claims of creditors.[46]

A partnership receiver should not be authorized in advance to prosecute and defend suits without further order;[47] nor has a court of equity power to authorize the appointment of a receiver in a partnership proceeding to sell real estate of the firm in another state.[48]

A partnership receiver holding funds for the benefit of all creditors may prevent the levy of an attachment in a suit commenced before the appointment.[49]

The receiver has power to impeach a fraudulent mortgage in behalf of creditors.[50]

Where a judgment has been confessed in fraud of creditors a receiver may be appointed with power to attack such confession.[51]

[42] Stiefel v. Berlin, 51 N. Y. Supp. 147.

[43] Ward v. Petrie, 157 N. Y. 301.

[44] Coleman v. Roff, 45 N. J. L. 7.

[45] Dewey v. Finn, 18 N. Y. Weekly Dig. 558.

[46] Palmer v. Bank of Zumbrota, (Minn.) 75 N. W. 380.

[47] Witherbee v. Witherbee, 17 App. Div. 181; 45 N. Y Supp. 297.

[48] Dunlap v. Byers, 110 Mich. 109.

[49] Myers v. Myers, 15 App. Div. 448; 44 N. Y. Supp. 513.

[50] Mandeville v. Avery, 124 N. Y. 376; Hedges v. Polhemus, 30 N. Y. S. 556; Kuser v. Wright, 52 N J. Eq. 825; Farmers' L. & T. Co. v. Baker, 20 Misc. N. Y. 387; Bayne v Brewer Pottery Co., 90 Fed. Rep. 754.

[51] Stern v. Austern, 120 N. C. 107.

The receiver of an insolvent debtor has power to set aside a fraudulent sale of such debtor of his personal property and may replevy the property or sue the vendee for its value.[52]

The legal authority of a receiver is co-extensive only with the jurisdiction of the court in which he was appointed in regard to the priority of creditors and the property or funds of a non-resident debtor not reduced to his possession.[53]

A person dealing with a receiver must take notice that his powers are limited and that he is constantly subject to the orders of court.[54]

§ **367. When He Has Not Power.**—(a) He has no power if a foreign receiver to maintain a suit to set aside a fraudulent conveyance.[55]

(b) Nor has a receiver power to attack the validity of judgments against a firm on the ground of fraud. In such case he occupies the same position as to creditors the firm did. The statute, however, sometimes confers this power, changing the general rule.[56]

(c) He has no general power to maintain a bill to set aside and annul the contracts of an insolvent corporation in a case where the corporation itself would be bound. This would not be true if the acts complained of were forbidden by law.[57]

[52] Rossman v. Mitchell, (Minn.) 75 N. W. 1053.

[53] Security Sav. & L. A. v. Moore, 151 Ind. 174.

[54] Brunner, Monds & Co. v. Central Glass Co., 18 Ind. App. 174.

[55] A foreign receiver cannot maintain a suit to set aside a fraudulent conveyance. Filkins v. Nunnemacher, 81 Wis. 91.

[56] A receiver in a proceeding to dissolve a copartnership cannot attack the validity of judgments against the firm on the ground of fraud. He occupies the same position as to creditors the firm did. Weber v. Weber, 90 Wis. 46. It is otherwise in supplementary proceedings where the statute confers such power. Id.

[57] A receiver has no power to maintain a bill to set aside contracts by an insolvent corporation where the latter was bound. Hyde v. Lynde, 4 N. Y. 387; but not so if the acts were forbidden by law. Leavitt v. Palmer, 3 Comst. 19; Gillett v. Moody, 3 Comst. 479.

§ **368. Receiver's Power to Sue.**—The receiver's power to sue is usually given in specific terms, or by implication from the general terms of the order, and the nature of the business. There would seem to be no serious question as to his power in this regard unless the receiver be a mere custodian of the property pending litigation, and particularly so where the suit is within the state of the receiver's appointment.[58]

Suit by a receiver against a party to whom property has been transferred by the debtor to secure advances will not be maintained when it appears that the amount due the pledger is greater than the value of the property held by him.[59]

It should be borne in mind that where the receiver seeks to reach property which has passed into the hands of third persons he must do so by a direct proceeding instituted by him for that purpose in which such third persons are made defendants.[60]

An order appointing a receiver in supplemental proceeding authorizing him to bring suit on a claim in favor of the debtor from a third person is not objectionable by reason of the extinguishment of the indebtedness by agreement between the parties. If there is such an agreement it can be shown on the trial.[61]

[58] A receiver appointed in supplementary proceedings may maintain a bill against a mortgagee where it appears that the mortgage was not filed for record. As between the mortgagor and creditor such a mortgage has no existence, the mortgagor cannot thereafter take possession and sell the property. Stephens v. Perrine, 143 N. Y. 476; Karst v. Gane, 136 N. Y. 316; Tremaine v. Mortimer, 128 N. Y. 1. In an action by a receiver to set aside a conveyance he must show proceedings necessary to vest in him the title of the real estate before he is entitled to the rents and profits. Wright v. Nostrand, 98 N. Y. 669. A receiver of an insolvent bank may properly prosecute and defend actions in the name of the bank, though there is a question whether he is clothed with a legal title to the property for want of a written assignment. Smith v. U. S. Express Co., 135 Ill. 279.

[59] Clymer v. Patterson, 52 N. J. Eq. 188; Cf. Wehle v. Koch, 46 N. Y. S. R. 24, 19 N. Y. Supp. 189.

[60] Wright v. Nostrand, 94 N. Y. 31.

[61] Globe Phosphate Co. v. Pinson, 52 S. C. 185.

In supplemental proceedings a receiver has not power to maintain suit at law for damages growing out of a conspiracy to prevent the collection of the debt.[62]

Leave need not be granted to file a creditor's bill against the corporation and its receiver if the leave is asked in the same court in which the receiver was appointed, though not in that proceeding if the suit was not instituted to wind up the affairs of the corporation.[63]

In a suit by a partnership receiver to set aside a fraudulent transfer as to creditors he is entitled to a sufficient amount to pay the judgment on which he was appointed and the expenses of the receivership.[64]

The limitation statute does not run in favor of a receiver of an insolvent corporation which has been dissolved against a claim which is not barred at the time of the appointment so long as the receivership is a continuing one.[65]

§ **369. Power to Sue in Foreign Jurisdiction.**—There is, however, considerable conflict in the authorities concerning the receiver's power to sue in a foreign jurisdiction. It was formerly contended that the receiver, being the mere hand of the court, had no power to sue or do other acts in his official capacity beyond the state of his appointment. The general trend of decisions, however, of later years, based upon the growing doctrine of comity and constitutional guarantees, is decidedly in favor of the receiver's power. In all matters except of strictly local concern the commercial relations of citizens of one state with those of another, and in all the incidents growing out of such relationship, there should be no more restrictions and impedi-

[62] Ward v. Petrie, 157 N. Y. 301.

[63] Sligh v. Shelton S. W. R. Co., (Wash.) 54 Pac. 763.

[64] Stiefel v. Berlin, 28 App. Div. 103.

[65] Ludington v. Thompson, 153 N. Y. 499.

ments than are absolutely required. To hold that a receiver, for instance, of a corporation, having indebtedness due it frequently in many other states, has no power to enforce collection thereof by suit in a foreign state is a short sighted policy, supported by the merest technicality and wholly at variance with the general scope and purpose of a receivership. It would seem that the doors of courts should be as open to a foreign receiver, who comes duly authenticated, as to a non-resident person or corporation, where the purpose is to reach assets belonging to or an indebtedness due the debtor. Some courts on the ground of comity permit a foreign receiver to sue except where their own domestic creditors would be injured thereby.[66]

§ **370. Suits Against Receiver.**—Where it is considered necessary to the attainment of justice and par-

[66] The receiver has no power to bring suits on choses in action in foreign jurisdictions, in the absence of statutory power. Amy v. Manning, 149 Mass. 487. The power of the receiver to sue in a foreign jurisdiction was not in fact an issue to be determined in the above case and what the court said was dictum. Cf. Harvey v. Varney, 104 Mass. 436; Booth v. Clark, 17 How. 322; Brigham v. Luddington, 12 Blatchf. 237; Yeager v. Wallace, 44 Pa. St. 294; Farmers, etc. v. Needles, 52 Mo. 17; Hazard v. Durant, 19 Fed. Rep. 471; Olney v. Tanner, 10 Fed. Rep. 101; 21 Blatchf. 540; Day v. Postal Tel. Co., 66 Md. 354; Bartlett v. Wilbur, 53 Md. 485; Graydon v. Church, 7 Mich. 36. A receiver may sue in a foreign state to collect an assessment on premium notes. Parker v. Stoughton Mill Co., 91 Wis. 174. But see Gilman v. Ketcham, 84 Wis. 60; Filkins v. Nunnemacher, 81 Wis. 91. A receiver appointed in a foreign court, for the benefit of creditors therein residing, can only sue in California on the ground of comity, but comity does not apply as against residents of the state where the receiver seeks to bring suit. In this case the receiver had reduced the property to possession and had taken it rightfully with him into a foreign state, where it was taken from him by local creditors. Humphreys v. Hopkins, 81 Cal. 551. See contra Chicago & Milwaukee R. R. Co. v. Keokuk Northern Line Packet Co., 108 Ill. 317. The receivers of a savings bank may maintain a bill in equity, against a person who is in possession of a note through an abuse of power by the treasurer of the bank, to compel the surrender of the note. Holden v. Upton, 134 Mass. 177. Very careful consideration has been given to the subject of the power of a receiver to sue in a foreign jurisdiction and the English and American authorities collected upon the subject in Smith on Receiverships, Sec. 73.

ticularly where complicated accounts are involved or the facts are disputed it is sometimes expedient that the court permit the receiver to be sued where the issues can be properly raised and tried. The policy of the law, however, is against the suing of the receiver and his consequent harassing in the receivership affairs by litigation, especially in other jurisdictions, without permission of the court appointing the receiver. This policy of the law is based upon the fundamental equity doctrine that jurisdiction properly obtained by the court for one purpose will be retained for the purpose of adjusting the rights of all parties in interest. Moreover the appointment of the receiver and the dominion over the *res* assumed by the court does not prevent in any case an intervention by a party in interest who will be heard *inter esse suo.*[67]

§ **371. Liability of Receiver.**—Under a Minnesota involuntary insolvency proceeding under the general statute of 1894, ch. 76, the lessor of a bank is entitled to damages growing out of the repudiation by the receiver of its executory contract and the abandonment of premises.[68]

A receiver is not liable to a judgment creditor for losses on his judgment caused by the expenses incurred by the receiver.[69]

§ **372. Title of Receiver to Debtor's Property and Effects.**—Upon the appointment and qualification of a receiver he acquires dominion—usually denominated title—over the property and effects of the debtor, or, at least, so much thereof as is embraced within the

[67] After the appointment of a receiver of a corporation a creditor seeking to collect his debt must apply to the court making the appointment for leave to bring an action against the receiver, or come in and be examined pro inter esse suo. Richards v. People, 81 Ill. 551. A receiver cannot be garnisheed without leave of the court. Blum v. Van Vechten, 92 Wis. 378.

[68] Minneapolis Base Ball Co. v. City Bank, (Minn.) 76 N. W. 1024.

[69] Second Ward Sav. Bk. v. Schranck, 100 Wis. 480.

scope of the suit. It was formerly considered necessary in a proceeding of this nature to compel an assignment by the debtor of his property to the receiver, but this is no longer considered necessary, and particularly so in supplementary proceedings. Pending suit the custody of the property is in the court acting through its receiver and its orders are as efficacious and binding as if the legal title was vested in the receiver. In fact, the filing of a creditors' bill and the service of process create an equitable lien on the debtor's property, which is in effect an equitable levy.[70]

The receiver by his appointment obtains no power and dominion over such property as the debtor has only a naked possession of, or where he holds as trustee, or the property is exempt.[71]

[70] The receiver appointed in a creditor's suit in a foreign state has no title to property in another state. Filkins v. Nunnemacher, 81 Wis. 91. A receiver in a supplementary proceeding is vested with the title to personal property only. (See Statute.) Skinner v. Terhune, 45 N. J. Eq. 565. A decree on the dissolution of an insurance company appointing a receiver vests in him the property of the corporation. Re Atty. Gen. v. Guardian Mut. Life Ins. Co., 77 N. Y. 272. On the appointment of a receiver and his qualifying the judgment debtor's property vested in him. Armstrong v. McLean, 153 N. Y. 490. Cf. Bostwick v. Menck, 40 N. Y. 383. That the filing of the bill is in effect an equitable levy see Miller v. Sherry, 69 U. S. (10 Wall.) 237; Bayard v. Hoffman, 4 Johns. Ch. 450; Beck v. Burdett, 1 Paige 305; Storm v. Waddell, 2 Sandf. Ch. 494; Corning v. White, 2 Paige 567; Edgell v. Haywood, 3 Atk. 352; Tilford v. Burnham, 7 Dana 109. If the debtor's property is in the hands of a third person under a bona fide transfer or he has placed thereon in good faith an incumbrance the receiver takes subject thereto. In other words his rights are to be determined by the rights of the debtor at the time of the appointment. Chautauqua Co. Bk. v. Risley, 19 N. Y. 369; Bunn v. Fonda, 2 N. Y. Code Rep. 70; Steele v. Sturges, 5 Abb. Pr. 442. As to the title of the receiver to choses in action in a foreign jurisdiction see Amy v. Manning, 149 Mass. 487, where it is held they do not pass. As against a judgment creditor, who is not a party to a creditor's suit, the title of the receiver appointed in such suit, to whom the debtor makes an assignment of his property, does not relate to the time of filing of the bill, but vests by force of the assignment only, and as of that date. Watson v. New York Central R. R. Co., 6 Abb. (N. Y.) Pr. N. S. 91.

[71] Hancock v. Sears, 93 N. Y. 79; Underwood v. Sutcliffe, 77 N. Y. 58; Tillotson v. Wolcott, 48 N. Y. 188; Campbell v. Foster,

A receiver may make claim to payments made upon a mortgage of land belonging to the judgment debtor's wife.[72]

A receiver has no interest or claim on property acquired by the judgment debtor after the appointment.[73]

No valid title can be acquired to land at a sale for taxes where such land is in the possession of the receiver.[74]

Where a receiver of a corporation has taken possession of all of its property and assets a creditor of another state cannot attach any of its property that has passed to the receiver.[75]

The title of a foreign receiver if by virtue of a voluntary conveyance or a transfer is good aginst every one, even domestic creditors. But where it depends on a foreign statute or judgment it will be sustained against all except domestic creditors.[76]

Where property has been transferred by the debtor prior to the appointment of a receiver the receiver merely acquires a right to set aside the transfer, if it was in fraud of creditors.[77]

§ **373. Possession of Receiver.**—Where execution has been issued upon a valid judgment recovered before the receiver's appointment the court may permit a sale of the real property of an insolvent corporation thereunder.[78]

The possession of property by a receiver in a suit

35 N. Y. 361; Graff v. Bonnett, 31 N. Y. 9; Fumin v. Malloy, 1 Jones & S. 382; Scott v. Nevins, 6 Duer 672; Cooney v. Cooney, 65 Barb. 524; Gardner v. Smith, 29 Barb. 68.

[72] Walsh v. Rosso, (N. J. Eq.) 41 Atl. 669.

[73] Thorn v. Fellows, 5 N. Y. Weekly Dig. 473.

[74] Virginia T. & C. S. & I. Co. v. Bristol Land Co., 88 Fed. Rep. 134.

[75] Merchants' Nat'l Bk. v. Pennsylvania S. Co., 57 N. J. Eq. 336.

[76] Mabon v. Ongley Elec. Co., 156 N. Y. 196. But see Filkins v. Nunnemacher, 81 Wis. 91.

[77] Thomas v. Van Meter, 153 Ill. 65.

[78] Pelletire v. Greenville Lumber Co., 123 N. C. 596.

which is not successful should be returned to the transferees of the property and not turned over to the sheriff holding executions.[79]

§ 374. Right of Creditor to Recover Unpaid Stock Subscriptions.—Notwithstanding a receiver has been appointed for an insolvent corporation, creditors thereof may enforce the unpaid stock subscriptions.[80] While there is not entire harmony in the cases on this subject the right should unquestionably exist where the receiver neglects or refuses to sue.

§ 375. Claims Against Receiver and Receivership Funds—Allowance of.—The receiver in the allowance or disallowance of claims against receivership funds in his hands, accruing prior to his appointment, and before insolvency in the case of an insurance company, occupies the position of the corporation.[81] And when so directed may hear and allow or disallow claims presented prior to the expiration of the time fixed by law.[82] Where claims are disputed it is proper for the court to authorize suit to be brought against a receiver to test the validity thereof.[83] The mere fact

[79] Home Bank v. J. B. Brewster & Co., 53 N. Y. Supp. 867.

[80] The creditors of an insolvent corporation of which a receiver has been appointed under the Minn. general statute, 1894, Ch. 76, may enforce the stock liability of its stockholders. Harper v. Carroll, 66 Minn. 487; Modified in 69 N. W. 1069. A creditor may maintain a suit to recover unpaid subscriptions to stock notwithstanding the pendency of a foreclosure proceeding where a receiver has already been appointed. Lea v. Iron Belt Mercantile Co., (Ala.) 24 S. 28. The statutory liability of a stockholder in a corporation, under the Kansas statute giving a right of action to the judgment creditor, may be enforced by such creditor, notwithstanding the appointment of a receiver of the corporation. American Freehold Land Mortg. Co. v. Woodworth (C. C. N. D. N. Y.) 82 Fed. Rep. 269.

[81] The receiver of an insurance company occupies the position of the corporation as to the allowance or disallowance of claims which accrued before the insolvency of the corporation and his appointment as receiver. Gray v. Blum, 55 N. J. Eq. 553.

[82] The receiver may hear and allow or disallow claims prior to the expiration of the statutory period. Bissell v. Heath, 98 Mich. 472.

[83] It is proper for the court on

of obtaining judgment by default against the debtor, brought after the appointment, does not entitle the claim to be exhibited without further evidence of its *bona fide* character.[84]

§ **376. Defenses to Claims by Receivers.**—A receiver of a corporation not only represents the corporation but represents its creditors as well, and is entitled to make any defense to a claim presented for allowance which the creditors and the corporation may have made, and even, in some cases, may interpose a defense which the corporation itself would have been estopped from making. He is not estopped from asserting as a defense to a conditional sale or chattel mortgage by a recital contained in the instrument that it was not properly recorded.[85] It is not a defense, however, in a suit by a stockholder to foreclose a chattel mortgage given by a corporation over which a receiver has been appointed, that he has a claim against the stockholder to the extent of the value of his stock.[86]

§ **377. Reservation of Rights of Creditor in Claim Presented.**—A claim filed with the receiver of a corporation by a non-resident creditor, with an express reservation or condition that by filing it no rights acquired by an attachment in another state are to be

a disputed claim to authorize a suit to be brought against the receiver regarding the validity thereof. Ludington v. Thompson, 153 N. Y. 499.

[84] Where a receiver has been discharged and the receivership property has been turned back, a judgment against the receiver is conclusive as to the existence of the claim, and also as to the amount. Garrison v. Texas & Pac. R. Co., 10 Tex. Civil App. 136; Danforth v. National Chemical Co., 68 Minn. 308.

[85] A receiver who represents creditors and the corporation itself may make any defense to a claim which creditors are entitled to, though the corporation itself might have been estopped. Hamor v. Taylor-Rice Engineering Co., 84 Fed. Rep. 392. The receiver is not estopped to claim that a conditional sale or chattel mortgage was not properly recorded by a recital contained in the instrument. Re Wilcox & H. Co., 70 Conn. 220.

[86] In a suit by a stockholder to foreclose a chattel mortgage given by a corporation it is not the defense by the receiver that he has a claim against the stockholder to the value of his stock. Kane v. Lodor, 56 N. J. Eq. 268.

lost, does not affect rights acquired by such attachment.[87]

§ 378. **The Time Within Which Claims Must be Presented.**—The court usually fixes a time in which claims are to be presented to the receiver for allowance, and such an order must be complied with or the claim will be barred.[88] The statement thus required must give the nature of the claim and the amount due thereon.[89] The rule requiring claims to be exhibited within a certain specified time is not inexorable, and where a sufficient excuse is given for not doing so the claim may be permitted to be filed and the claimant entitled to participate in the distribution on an equality with other creditors.[90] Where a notice for the presentation of claims has been given in the Federal court it does not preclude a claimant from prosecuting his claim to a judgment in a state court in an action pending therein.[91] Such an order for the presentation of

[87] Linville v. Hadden, (Md.) 41 Atl. 1097.

[88] Where a court orders that all claims should be presented by intervention by a certain day the order must be complied with or the claim will be barred. Dillingham v. Kelly, 8 Tex. Civ. App. 113. The order appointing a receiver fixes the time to which claims of creditors must be preferred for adjusting. Gray v. Reynolds, 55 N. J. Eq. 501. And see also Jones v. Arena Pub. Co., 171 Mass. 22. The court has power to require all creditors to present their claims within a specified time. Abraham v. Mercantile T. & D. Co., 86 Md. 254.

[89] The court should direct all creditors to come in and prove their claims against the receivership funds and the statements should give the nature and the amount due. Bidle Purchasing Co. v. Port Townsend Steel Wire & Nail Co., 16 Wash. 681.

[90] A claim against an insolvent corporation where the facts justify will be permitted to file his claim after the expiration of the term limited by the court and be allowed a preferential dividend from the receivership funds to such an extent as to put him on an equality with other creditors who have received partial dividends. Pattberg v. Louis Pattberg & Bros., 55 N. J. Eq. 604. A creditor not guilty of negligence who presents his claim late is entitled to share equally with other creditors. London & S. F. Bk. v. Willamette Steam Mill L. & Mnfg. Co., 80 Fed. Rep. 226.

[91] A notice authorized by the court requiring all claims to be presented to the receiver appointed by a federal court within a certain time, does not preclude the prosecution of the claim to final judgment in an action pend-

claims has no application to a trust fund which does not constitute a part of the assets of the estate.[92]

§ 379. Validity of Claims to Receivership Funds. —It is competent for the bondholders of a railroad to attack the validity of the claims of other creditors which are sought to be made equal or superior to their claims.[93] As between creditors' funds in the hands of a receiver are of an equitable nature and are to be distributed on the basis of equality.[94] State laws cannot control the rights of creditors to participate in the distribution of funds in the hands of a receiver appointed by a federal court.[95] The purchaser of a valid claim is entitled to a dividend from the receivership fund for the entire face value, irrespective of the purchase price.[96] In some cases it has been held that the claim must be reduced to a judgment before it will be allowed, as where a purchaser of shares in a bank seeks to recover the purchase price on the ground that the purchase was induced by fraud.[97]

ing in the state court. Erb v. Popritz, 59 Kan. 264.

[92] An order of the court fixing a time within which claims are to be presented against the assets of an incorporated company will not be a bar to a claim to a trust fund which does not constitute part of the assets. New York Security & T. Co. v. Lombard Invest. Co., 75 Fed. Rep. 172.

[93] The bond-holders of a railroad can attack the validity of other claims which are sought to be made equal or superior to their claims. Farmers' & Merchants' Nat'l Bk. v. Waco Elec. R. & L. Co., (Tex. Civ. App. P.) 36 S. W. 131.

[94] As between creditors funds in the hands of a receiver are of an equitable nature and are distributed on the basis of equality. In re Waddell-Entz. Co., 67 Conn. 324.

[95] State laws cannot control the rights of creditors to participate in the distribution of a fund in the hands of a receiver appointed by federal courts. London & S. F. Bk. v. Willamette Steam Mill L. & Mnfg. Co., 80 Fed. Rep. 226.

[96] The purchaser of a valid claim is entitled to a dividend from the receivership fund for the entire face value, irrespective of the purchase price. Dimmick v. W. Fred Quimby Co., (N. J. Eq.) 41 Atl. 101.

[97] The purchaser of shares in a bank is not entitled to recover from the receiver of the bank the purchase price on the ground that the purchase was induced by fraud until he has reduced his claim to a judgment. Wallace v. Hood, 89 Fed. Rep. 11. Claims which arise by virtue of the death of a person insured in an assessment company before

§ 380. Claims Against Receivership Fund Not Allowed.—A claim against funds in the hands of a receiver will not be allowed where it appears that the claim is on account of a loan made to a construction company which owned all the stock of the debtor company, the receiver holding only assets of the latter company;[1] or where the statute requires the presentation of the claim to be made under oath and the requirement is not complied with;[2] or where the claim is not within the scope of the order directing the receiver to pay the expenses of operation, as in case of a retainer of counsel for services not concerning the operation;[3] or where a claim is made by a railroad for freight charges against the receiver of another road which has been sold and the purchaser has assumed the debts;[4] or where a claim for a dividend has been made against funds in the hands of a receiver of a national bank ap-

the appointment of a receiver are to be termed "accrued" claims under Massachusetts Stat. 1890, Ch. 421, sec. 14. Knowlton v. Massachusetts B. L. A. (Mass.) 50 N. E. 520.

[1] The claim of a creditor against receivership funds is not entitled to payment, where it appears that the claim is for a loan made to a construction company which owned all the stock of the debtor company, the receiver holding only the assets of the debtor company. Exchange Bk. v. Macon Construction Co., 97 Ga. 1. The receiver cannot divert the property from creditors of one corporation to the creditors of another corporation. Ames v. Union P. R. Co., 74 Fed. Rep. 335.

[2] Where a statute requires the presentation of a claim to a receiver, under oath, the court will not allow such claim without a compliance with the statute. Blake v. Domestic Mfg. Co., (N. J. Eq.) 41 Atl. 376. The receiver is not liable on a claim which has been partly assigned as collateral seurity but not filed as required by order of court. Meding v. Todd, (N. J. Eq.) 41 Atl. 222.

[3] A retainer as counsel in a matter not connected with the operation of a road is not within the order of a court ordering receivers to pay the expenses of operation. Grand Trunk R. Co. v. Central Vt. R. Co., 88 Fed. Rep. 636.

[4] The claim of a railroad against the receiver of another road for freight charges is not a proper item against the purchaser of the road under the receivership who is required to pay the debts of the road. South Carolina v. Port Royal & A. Ry. Co., 89 Fed. Rep. 565.

pointed by the comptroller of the currency, except when ordered by him.[5]

§ 381. Claims Entitled to a Preference in Payment.—Certain claims against receivership funds, by reason of liens secured by process of law, act of the parties, or by statute, are entitled to preference over claims of other creditors. Thus:

An attachment creditor of a corporation having secured a lien is entitled to payment out of the funds in the hands of the receiver where the property attached was delivered by the sheriff under an order of court preserving the lien in preference to other liens subsequently acquired.[6]

And claimants who furnish supplies to a corporation before the receivership are entitled to preference as against mortgagees, if there is an excess of net earnings over the operating expenses and fixed charges.[7]

And money held in trust by the debtor.[8]

And claims against the receivership fund for right-away have priority over receivership expenses under Tennessee Constitution, art. 1, sec. 21.[9]

And judgments against a railroad which are given a priorty by statute[10]

[5] The funds in the hands of the receiver of a national bank who has been appointed by the comptroller of the currency are not liable for a dividend to a creditor except when ordered by the comptroller. Merrill v. First Nat'l Bk., 75 Fed. Rep. 148.

[6] Wise v. L. & C. Wise Co., (N. Y.) 12 App. Div. 319.

[7] In Case v. Fredrickson, 63 Wis. 501, the court refused to make claims for labor preferential to other claims. Grand Trunk R. Co. v. Central Vt. R. Co., 88 Fed. Rep. 636. As to priority of labor claims under Iowa laws, Ch. 48, code sec. 739, see Haw v. Burch, (Ia.) 77 N. W. 461.

[8] Where money has been collected by the bookkeeper of a bank to be set aside and used to reimburse the bank for advances, it is impressed with an equitable trust which cannot be reached by the receiver. Atlantic Trust Co. v. Carbondale Coal Co., 99 Ia. 234.

[9] Crosby v. Morristown & C. G. R. Co., (Tenn.) 42 S. W. 507.

[10] Holders of judgments against a railroad, which by statute are given a lien prior to mortgage liens upon the property of the road, cannot be prevented from claiming priority in

§ 382. Claims Not Entitled to a Preference in Payment.—Certain claims against a receivership fund are not entitled to a preference in payment over those of other creditors.

Labor claims, more than six months old before the appointment, are not to be given priority of receivership funds.[11]

A sleeping car company agreeing to furnish cars for a railroad corporation, with the right to collect fares for seats and berths and the company to pay a certain sum per mile for each mile run by such cars, is not entitled to priority over a mortgage debt.[12]

The seizure of the unmortgaged property of a corporation in a suit to foreclose a mortgage, by the appointment of receivers, does not entitle creditors obtaining judgments to an equitable lien upon the property so seized, on the ground that they were prevented from obtaining legal liens by the seizure.[13]

A claim preferred in constructing an addition to certain canals which were never completed or in operation is not entitled to a preference over bondholders.[14]

An order of court authorizing the receiver to pay a specific dividend on all claims does not make the dividend of a creditor a preferred lien upon the entire assets of a corporation.[15]

Where a creditor attaches and sells property at a sheriff's sale he must account for the fair value before

payment out of the funds earned by a receiver appointed under a general creditors' bill. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C. S. D. Ohio, D. Ky., & E. D. Tenn.) 91 Fed. Rep. 202.

[11] Thomas v. Cincinnati N. O. & T. P. Ry. Co., 91 Fed. Rep. 195.

[12] Pullman Palace Car Co. v. American Loan & T. Co., 55 U. S. App. 170; 84 Fed. Rep. 18.

[13] Mercantile Trust Co. v. Southern States Land & T. Co. (C. C. App. 5th C.) 52 U. S. App. 675, 86 Fed. Rep. 711.

[14] Atlantic Trust Co. v. Woodbridge Canal & I. Co., 86 Fed. Rep. 975.

[15] Rockwell v. Portland Sav. Bk., 31 Ore. 431.

sharing in the benefit of a receivership in another state.[16]

Where the lien of judgment creditors is lost by laches he will not be entitled to priority.[17]

In a creditors' proceeding, where fraudulent judgments are set aside and transfers of property, the court will not direct the application of the property and its proceeds to the payment of complainants' judgments by its receiver, where a receiver has been appointed for the dissolution of the debtor firm, except in so far as property may be realized from such judgments and transfers.[18]

The general creditors of a railroad company, who instituted suit to wind up the corporation by reason of insolvency, and for a receivership, have no right to have expenditures of the receiver from the income for preferential claims charged to the mortgagees.[19]

A claim against the funds of a corporation in the hands of a receiver for a breach of contract for employment does not entitle the claimant to a preference. It is not a claim for wages.[20]

In a general creditor's bill a claimant against an insolvent corporation where the claim is based on a specified amount for breach of contract, does not occupy the position of a rightful claimant to preference in the funds in the hands of the receiver.[21]

A creditor having notice of the pendency of a winding up suit is not entitled to share in the distribution of the receivership fund without a surrender of whatever advantage he may have obtained by an attachment in a foreign state.[22]

[16] Ward v. Connecticut Pipe Mnfg. Co., 71 Conn. 345.

[17] Saving & T. Co. v. Bear Valley I. Co., 89 Fed. Rep. 32.

[18] Metcalfe v. Moses, 22 Misc. 664; 50 N. Y. Supp. 1060.

[19] Ruhlender v. Chesapeake O. & S. W. R. Co., 91 Fed. Rep. 5.

[20] Spader v. Mural Decoration Co., 47 N. J. Eq. 18.

[21] Crosby v. Morristown & C. G. R. Co., (Tenn.) 42 S. W. 507.

[22] Ward v. Connecticut Pipe Mnfg. Co., 71 Conn. 345; Mercan-

Under the Massachusetts Statute of 1890, ch. 421, the date at which a claim must have accrued as contemplated by the statute is the date of filing the bill.[23]

A receiver having paid the interest and taxes to prevent a sale under a mortgage is entitled to priority over creditors under levies made before the appointment.[24]

§ **383. Expenses Against Receivership Fund—When Allowed.**—Expenses for supplies and equipments are properly chargeable against receivership funds and property.[25]

Operating expenses are chargeable against the property irrespective of the ultimate ownership.[26] Such expenses, at least for a reasonable time prior to the appointment, are chargeable to the earnings during the receivership.[27]

The current expenses of a receivership are chargeable to the *corpus* when the income has been diverted.[28]

The cost of an expert accountant is proper against a receivership fund where a large sum is realized thereby.[29]

The fees of a special commissioner for selling property in a foreclosure proceeding, where the contest is between the mortgagees and general creditors, are not chargeable against the receivership funds.[30]

Money expended for various purposes for the benefit of mortgagees is not payable from the earnings as between the mortgagees and general creditors.[31]

tile Nat. Bk. of City of N. Y. v. Macfarlane, 71 Minn. 497.

[23] Knowlton v. Massachusetts B. L. A., (Mass.) 50 N. E., 520.

[24] Dummer v. Smedley, 110 Mich. 466.

[25] South Carolina v. Port Royal & A. Ry. Co., 89 Fed. Rep. 565. And so are terminal facilities. Id.

[26] Illinois Trust & S. Bk. v. Pacific R. Co., 115 Cal. 285.

[27] Central T. Co. v. Utah C. Ry. Co., 16 Utah 12.

[28] Virginia & A. Coal Co. v. Central R. & B. Co., 66 Fed. Rep. 803; Central T. Co. v. Thurman, 94 Ga. 735.

[29] Sands v. E. S. Greeley & Co., 83 Fed. Rep. 772.

[30] Randolph v. Farmers' Loan & T. Co., 91 Tex. 605.

[31] Randolph v. Farmer's Loan &. T. Co., 91 Tex. 605.

A court will not decree the payment of receivership expenses against the party securing the appointment though he may fail in a suit, where the appointment was proper and secured creditors consent.[32]

§ 384. Jurisdiction of Court Over Property and Parties.—A claim of lien by an officer of a corporation as security for an indebtedness to him does not affect the jurisdiction of a court which has appointed a receiver of the company in a suit where the officer is a party and such party holding property may be ordered by the court to turn it over to the receiver.[33]

In regard to concurrent jurisdiction the rule is that the court first obtaining control will exclude other courts.[34]

In the case of an assignment for creditors the filing of a bond and its approval in the state court will not prevent a federal court from appointing a receiver.[35]

A federal court will not appoint a receiver of property that has been attached under a writ from a state court where by the attachment such property is in the custody of the court.[36]

The court will not by injunction restrain the enforcement of a judgment against the receivership property in possession.[37]

§ 385. Power of Court Over Parties and Receiver.—The court has power to require a judgment debtor to pay to the receiver the balance of a bank account standing in the name of his wife, which account is managed by the judgment debtor under a power of attorney from his wife.[38]

[32] Jaffray v. Rabb, 72 Ia. 335.
[33] Tinsley v. Anderson, 171 U. S. 101.
[34] Ligett v. Glenn, 51 Fed. Rep. 381.
[35] Watson v. Bettman, 88 Fed. Rep. 825.
[36] Southern Bk. & T. Co. v. Folsom, 75 Fed. Rep. 929.
[37] Gardner v. Caldwell, 16 Mont. 221.
[38] Weld v. Sage, (N. Y.) 54 N. Y. Supp. 253; 34 App. Div. 471.

§ **386. Receivership in Bankruptcy Matters.**—(a) After the adjudication in bankruptcy and before the appointment of a referee a receiver may be properly appointed where the circumstances render it desirable under the bankrupt law of 1898.[39]

(b) And so where an assignment has been made and the assignee is in possession and is administering the estate, where the assignment is an act of bankruptcy, a receiver should be appointed by the bankrupt court.[40]

(c) Where a receiver has been appointed by the state court to take possession of the property of a corporation, the United States court will not appoint a receiver, as the jurisdiction is concurrent.[41]

[39] A receiver may be appointed after an adjudication and before the selection of assignee for the temporary care of the estate, when special circumstances render it desirable. Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112; Fed. Cas. 8,079; and this without notice to the bankrupt or his creditors. Id. It is not only within the power of the court but it is its duty, upon its own motion in a proper case, to take the actual possession of the bankrupt's estate through a receiver or by direction to the marshal between the time of filing the petition in the case of a voluntary bankrupt and the appointment of a trustee. In re Abrahamson & Bretstein, 1 Am. B. R. 44.

[40] Where an assignment has been made within four months preceding adjudication in bankruptcy a receiver will be appointed by the bankrupt court to receive and take from the assignee, under the state insolvent law, the property assigned to him. In re Smith, 2 Am. B. R. 9. Where assignees under an assignment for the benefit of creditors are enjoined from interfering with the assigned property, and are made defendants to a suit by an assignee, a receiver may be properly appointed pending the suit. Sedgwick v. Place, 3 N. B. R. 35. Where a person by making a general assignment for the benefit of creditors has committed an act of bankruptcy, and the assignee has taken possession and is administering upon the property under the direction of a state court under assignment acts, the court of bankruptcy may and ought to appoint a receiver to take charge of the assigned property pending the time of filing the petition and the appointment of a trustee. In re Etherridge Furn. Co., 1 Am. B. R. 112.

[41] Blake v. Ala. & Chat. R. R. Co., 6 N. B. R. 331; Fed. Cas. 1,493. On a petition filed in the United States circuit court for the southern district of Alabama, praying that a receiver be appointed for railroad property. Held that, as the United States circuit court for the southern district of Mississippi and the chancery courts of Alabama, Georgia and Tennessee had acquired jurisdiction, and as their

(d) In the matter of jurisdiction in its relation to receivers, the general rule is that property in the hands of a receiver in a state court cannot be interfered with by the bankrupt court where the state court has jurisdiction of the subject matter and the property is *in custodia legis.*[42]

(e) The effect of the possession of the receiver in so far as the rights of creditors are concerned is suspensive, as he in such case holds for the legal owner.[43]

(f) After the foreclosure of a mortgage, a sale therein

powers were just as large, and as they were competent to administer full relief, the court would not interfere. Alabama & Chatt. R. R. Co. v. Jones, 7 N. B. R. 145. Fed. Cas. 127. Where a bill was filed by certain stockholders praying an injunction to prevent contemplated fraudulent acts, and a receiver was appointed, and thereafter a petition in bankruptcy was filed, and an assignee appointed, a motion to discharge the receiver and to transfer the property to the assignee was denied. Myer et al. v. Crystal Lake P. & P. Works, 14 N. B. R. 9. When receivers of a corporation, declared insolvent under state laws, claimed the right to administer the assets as against the bankruptcy courts, held, the United States bankruptcy courts could take as against them. In re Ind. Ins. Co., 6 N. B. R. 260; Holmes, 103; Fed. Cas. 7,017.

[42] The bankrupt court will not compel a receiver appointed prior to the bankruptcy proceedings to turn over the firm assets to a trustee where the receiver is an officer of the state court and the court has jurisdiction over the property. In re Price, 1 Am. B. R. 606. Receivers of a company "dissolved" under state insolvency laws have no power to withhold the assets of the bankrupt company from the jurisdiction of the courts of bankruptcy. In re Independent Ins. Co., 6 N. B. R., 260; Holmes, 103; Fed. Cas. 7,017; in re Price, 1 Am. B. R. 606; Cf. Clark v. Binninger, 3 B. R. 528; S. C. 38 How. Pr. 341; Sedgwick v. Menck, 1 B. R. 675. A receiver appointed by a state court will not be enjoined by the bankruptcy court from disposing of property in his hands, based merely upon a prayer in an involuntary petition. Mather v. Coe, 1 Am. B. R. 505. A motion made in the state court for the appointment of a receiver after a petition in involuntary bankruptcy was filed cannot be entertained. Carpenter v. O'Connor, 1 Am. B. R. 383.

[43] Property of a bankrupt was not in the receiver's hands when a subsequent incumbrancer, who had been already impleaded by a prior one in the original action, filed, without leave of court, a subsequent original bill to foreclose. Held, latter bill not sustained where relief sought is competent in the pending litigation. Sutherland et al. v. Lake Sup. S. C., R. & I. Co. Where the court takes possession of property and places the same

and the establishment of a deficiency decree, the receiver is entitled to the rents as against the assignee in bankrutpcy.[44]

(g) The right of an execution creditor to money in the hands of the marshal, by reason of supplemental proceedings commenced prior to proceedings in bankruptcy, will not prevail.[45]

(h) A corporation in the hands of a receiver appointed in a state court is an involuntary bankrupt (Act 1898).[46]

(i) Such a receiver is the proper representative of the corporation in a bankruptcy proceeding.[47]

in the hands of receivers, the rights of the parties are not thereby affected, as the receiver holds for the legal owner and the action of the court is merely suspensive. Miller v. Bowles, et al.; Appleton v. Stevers, Ass., 10 N. B. R. 515.

[44] Hays v. Dickinson, 15 N. B. R. 350.

[45] An execution credit or claimed a lien on money in the hands of the marshal by virtue of proceedings supplementary to execution commenced prior to bankruptcy, but which before appointment of receiver were restrained by the bankrupt court. Held, that the claim must be disallowed; that until the appointment of a receiver his right is not a lien within the bankrupt law. In re Wheeler et al., 18 N. B. R. 385; 26 Pittsb. Leg. J. 84; Fed. Cas. 17,490.

[46] Where a corporation is insolvent and in the hands of a receiver, appointed by a state court on the application of creditors filed within four months, it is adjudged to be an involuntary bankrupt. In re Empire Metallic Bedstead Co., 1 Am. B. R. 136. The appointment of a receiver by a state court to take possession of the assets of a person, firm or corporation, and apply the same to the payments of debts, is a "taking on legal process," within the meaning of the act of 1867. In re Mer. Ins. Co., 6 N. B. R. 43. In the absence of proceedings under the bankrupt act of 1898 the right of the state court to appoint a receiver for an insolvent corporation under the local insolvency laws is not suspended. Strohl v. Superior Court, 1 N. B. N. 309.

[47] A duly appointed receiver of a corporation is the proper representative of the corporation in a bankruptcy proceeding and its functions are not limited by the jurisdiction of the court in which he was appointed. In re Republican Ins. Co., 8 N. B. R. 197. A corporation had been placed in the hands of a receiver by the state court, and a petition in bankruptcy having been filed, the rule to show cause was served on the cashier, who had turned the keys over to the receiver. Held, sufficient service. Platt v. Archer, 6 N. B. R. 465; 9 Blatchf. 559; Fed. Cas. 11,213. The receiver of a corporation is entitled to be heard on a motion to set aside an adjudication. In re Atl. Mut. Life Ins. Co., 16 N. B. R. 541.

(j) He cannot maintain suit to recover the value of property sold by a bankrupt in fraud of the act.[48]

(k) But as a general rule he may sue in foreign jurisdictions.[49]

(l) And as receiver of a creditor may prove the debt in bankruptcy.[50]

(m) When appointed more than four months prior to the filing of a petition in bankruptcy his title is good as against the trustee; and to a judgment or decree setting aside a fraudulent conveyance of the debtor the trustee obtains no title.[51]

(n) The title of a receiver in a railroad under a proceeding in a state court is good as against a trustee

[48] A receiver cannot maintain an action to recover the value of property sold by the bankrupt, in fraud of the bankrupt act, prior to the commencement of the proceedings, and the assignee will not, on motion, be admitted to prosecute the suit. Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112; Fed. Cas. 8,079.

[49] A receiver appointed by courts of one state may generally sue in the courts of another state. Chandler, Receiver et al. v. Siddle, 10 N. B. R. 236; 3 Dill. 477; 1 Cent. Law J. 341; Fed. Cas. 2,594. When a receiver goes into a court of law he must stand on the legal estate. If he applies for leave to use the name of the person having the legal right of action, the court will indemnify the latter by compelling security against the costs. Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Wkly. Dig. 112; Fed. Cas. 8,079.

[50] A receiver of property of a creditor of the bankrupt is an assignee of the debt, and as such assignee may prove it. But as it was assigned before proof, the proof must be supported by the deposition required in General Order No. 34 (Act of 1867). The deposition may be ex parte, as in Form No. 22. In re Mills, 17 N. B. R. 472; Fed. Cas. 9,612.

[51] Where a receiver by an action brought more than four months before the filing of a petition in bankruptcy has recovered a judgment setting aside a conveyance in fraud of creditors made before the bankrupt act is passed, the trustee in bankruptcy has no title to such judgment and is not entitled to be substituted as plaintiff. In re Meyers, 1 Am. B. R. 347. In the absence of proceedings in bankruptcy a state law which provides for the winding up of affairs of an insolvent corporation by the appointment of a receiver is not suspended. State ex rel. Strohl v. Superior Court, 2 Am. B. R. 92. The receiver is not entitled to rights as against an assignee where he was appointed after the filing of the petition. Conover v. Dumahaut, 17 N. B. R. 558. Until a lien is secured by the appointment of a receiver the property will be subject to the claim of the assignee in bankruptcy. Johnson v. Rogers, 15 N. B. R. 1.

in bankruptcy until impeached for cause impeachable under the bankrupt act. (Act of 1867.)[52]

(o) The same person cannot be at the same time receiver under a proceeding in a state court and a trustee or assignee under the bankrupt act.[53]

§ **387. Distribution of Receivership Funds.**—The New York assets of a Connecticut corporation collected by New York receivers appointed in a Federal court should be first applied to the protection of New York creditors before distribution among general creditors.[54]

Under the Connecticut general statute, sec. 590, the court may require a claimant to elect between the surrender of his security and the taking of a dividend upon the excess of such claim above the value of his security.[55]

[52] A United States district court in bankruptcy will not interfere with possession of receivers appointed by state court to take charge of a railroad until title is impeached for cause impeachable under bankrupt act. Alden v. Boston, H. & E. R. R. Co., 5 N. B. R. 230; Fed. Cas. 152.

[53] The same person cannot be at the same time receiver under the state law and a trustee or assignee appointed by the bankrupt court. In re Stuyvesant Bank, 6 N. B. R. 272.

[54] Sands v. E. S. Greeley & Co., 80 Fed. Rep. 195.

[55] In re Waddell-Entz. Co., 67 Conn. 324.

CHAPTER XV.

THE BANKRUPTCY LAW IN ITS RELATIONSHIP AND EFFECTS AS TO CREDITORS.

§ 400. General.
401. Effect of upon creditors generally.
402. Jurisdiction of bankruptcy court.
(a) Power to stay pending suits.
(b) Power to entertain and determine all controversies.
(c) State court has not concurrent jurisdiction.
(d) Territorial extent of jurisdiction.
(e) Jurisdiction depends on citizenship.
(f) Jurisdiction in fraudulent transfers, when.
(g) Jurisdiction as to adverse claimant.
(h) Jurisdiction of state court in contempt proc.
(i) Jurisdiction when property is in state court.
(j) Who are parties.
403. Liens in state court void, when.
404. Proceedings to obtain possession of property in hands of receiver of state court.
405. Power of bankruptcy court to restrain levy.
406. Lien enforced in state court, when.
407. Jurisdiction in matters of fraudulent conveyance.
408. Jurisdiction where corporation dissolved.
409. Proceedings in state court, when void.
410. Existence of bankrupt law does not suspend state law.
(a) Does not ipso facto as to collection of debts.
(b) Voluntary assignment when not, when.
(c) Where trustee and creditors abandon claim.
(d) After sale of property in state court.
(e) In matters of alimony.
(f) Where execution levied prior to bankruptcy proceedings.
(g) When dispute between assignee and purchaser.
(h) Where debts are fully secured by liens.
(i) Where acts of state court are not in conflict.
(j) Adverse claimants to property.
(k) In foreclosure proceedings, when.
(l) Circuit court no jurisdiction, when.
(m) Discharge must be pleaded to affect, when
(n) Option in state courts, when.

(o) Power of congress to impose duty on state court.
(p) Attachment in state court, when.
(q) United States court no jurisdiction, when.
(r) Failure to procure discharge, effect of.
(s) When right to real and personal property involved.
(t) When bankruptcy proceedings not brought to notice.
(u) No power in state court to impeach discharge.
(v) State court cannot garnishee, when.

411. Jurisdiction of state court where assignee or trustee is a party.

412. Suspension of state laws.

413. General effects of bankrupt law and proceedings thereunder.
(a) Law of 1898 in operation from its passage.
(b) Payments by debtor after proceedings commenced.
(c) Does not affect bona fide liens.
(d) Does not affect rights of bona fide claimants.
(e) Effect as to conditional sales.

414. Effect of bankruptcy as to liens.
(a) Legal and bona fide liens protected.
(b) Judgment liens in state court valid and invalid.
(1) Valid
(2) Invalid.
(3) Judgments by confession.
(4) When not a lien.
(c) Execution liens valid and invalid.
(1) Valid.
(2) Invalid.
(d) Liens secured by creditor's bill.
(e) Liens of mortgagee in possession.
(f) Liens secured by attachment.
(g) Liens by pledge.
(h) Lien of landlord.
(i) Power of bankrupt court over liens.

415. Effect of bankruptcy on mortgages and mortgage foreclosures.
(a) Mortgages, when valid.
(b) Mortgages, when void.
(c) Foreclosure in state court.

416. Injunction in bankruptcy proceedings.
(a) When granted—General.
(b) Granted against sale on execution.
(c) Granted against judgment.
(d) Against proceedings in state court.
(e) Against foreclosure proceedings.
(f) Against supplementary proceedings.
(g) Against assignments.
(h) Restraining order under Sec. 11.

417. Effect of bankruptcy upon assignments and insolvency laws.
   (a) Insolvency laws, when suspended
   (b) Distinction between insolvent laws and assignments.
   (c) When assignment an act of bankruptcy.
   (d) Title derived under state insolvent laws.
   (e) Suit in re by trustee.
418. Effect of bankruptcy laws as to fraudulent conveyances.
   (a) Jurisdiction—Bankrupt court—Trustee.
   (b) How avoided.
   (c) Who may avoid.
   (d) What is fraudulent conveyance.
   (e) When fraudulent conveyance act of bankruptcy.
   (f) Power of bankrupt court over.
   (g) Kinds of fraudulent conveyances.
   (h) Rights of creditors vested in assignee.
   (i) Rights of creditors under creditor's bill.
   (j) Rights of seller under fraudulent purchase.
   (k) Title in whom vests.
419. Effect of bankruptcy law on preferences.
   (a) Preferences, when valid under.
   (b) Preferences, when void.
   (c) Preferences, when act of bankruptcy.
   (d) Preferences secured by legal proceedings.
   (e) Statutory preferences.
   (f) Right of assignee to recover.
   (g) Judgment creditors not entitled to, when.
   (h) Creditors may attack, when and where.
   (i) Landlord entitled to priority, when.
   (j) Priority in partnership assets.
   (k) Priority under conditional contract.
   (l) Law of distribution changed as to priorities.
   (m) Judgment notes may be preferential.
   (n) Taxes entitled to priority.
420. Insolvency as an element in bankruptcy.
   (a) What is insolvency.
   (b) Effect of insolvency—Notice.
421. Statute of limitations in bankruptcy.
422. Corporations may be adjudged bankrupts.
   (a) Jurisdiction of Federal courts.
   (b) Effect of bankruptcy of on directors and stockholders.
   (c) What corporations may be proceeded against.
423. Effect of bankruptcy on alimony.
424. Exemptions under bankrupt law.
   (a) Title to does not pass.
   (b) Exemptions in property fraudulently conveyed.

(c) In partnership property.
(d) Determined by state laws.
(e) Must be claimed.
(f) When waived in notes.
(g) Exempt property, when may be sold.
(h) Termination of homestead.
425. Rights of creditors.
(a) To require trustee to account.
(b) To declare debtor bankrupt.
(c) To move for a preference.
(d) To a sale by receiver.
426. What are assets.
427. Discharge of debtor.

Note.—For provisions of Bankrupt Act referred to in this chapter see Appendix.

Section **400. General.**—It is designed in this chapter to treat mainly of the scope and effect of the existing bankrupt law with reference to the equitable rights and remedies of creditors; how far those rights and remedies are unaffected, modified or suspended by the operation of the law so long as it shall remain in force and effect. The history of national bankrupt legislation in this country tends to establish the belief that no permanent and continuous law will be enacted, and perhaps it is to the best interest of commercial affairs that this should be so, unless, indeed, the involuntary feature of it should be made permanent with a view of securing uniformity. From the general point of view it is undoubtedy true that the great variety of state legislation embodied in our insolvency laws and quasi bankrupt laws can be only detrimental to the commercial public interests.[1]

[1] The first bankrupt act passed in England was the statute of 34 and 35 Henry VIII., Ch. 4. The provisions of this act were extended and expanded by the act of Eliz., Ch. 7, 21 Jac. 1, Ch. 19, by act of 7 George I. Ch. 21, by act of 5 George II. Ch. 30, by act of 46 George III. Ch. 135, by act of 6 George IV. Ch. 16, by act of 1 and 2 William IV. Ch. 56. From the days of Henry VIII. to the days of Victoria the English bankrupt act applied only to traders and it was not until 1861 that bankruptcy was extended to non-traders. The United States bankrupt law of 1800 was an involuntary law and applied only to traders, brokers and underwriters. The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387.

§ 401. The Effect of, Upon Creditors Generally. —The general effect of the bankrupt law upon debtors at large and its restraining influence with regard to those acts and conduct which form the basis of the equitable rights and remedies of creditors cannot be estimated and, of course, is political and ethical in its nature. The particular effect of the bankrupt act upon the great body of debtors and their relationship to their creditors and the equitable rights and remedies of the latter with regard to the former and their property and effects remain as before the passage of the law. Except in the matter of state insolvent laws the scope and effect of the bankrupt law is not sweeping, and relates only to the comparatively few cases of bankrupt debtors who by voluntary or involuntary action are brought within the jurisdiction of the bankrupt court. The equitable remedies of creditors, as to the property and effects of their debtors, as they existed prior to the passage of the bankrupt act, except in the matter of preferences and the forum, remain in substance as before. The trustee is selected by and is the representative of the creditors and as a general rule whatever rights and remedies existed in their favor prior to bankruptcy are enforcible by and available to him in state and federal courts in their behalf. While the primary purpose, other than the discharge of the debtor, is to secure equality in the distribution of the debtor's assets among his creditors, yet all contractual liens and liens secured by legal proceedings obtained in good faith and not in fraud of creditors and the act are respected and maintained, and in many cases these liens are enforced through the same remedial channels as before, even where bankruptcy pro-

The two main principles lying at the basis of the bankrupt act are that the debtor may be discharged from his provable debts and that his collectible assets may be divided equitably and ratably among his creditors. Bank v. Katz, 1 Am. B. R. 19.

ceedings are pending in behalf of or against the debtor.

The bankrupt law is statutory in its origin, but in its scope and purpose and in the proceedings by which it is enforced it is equitable in its nature, and being remedial should be governed by the rules pertaining to that class of legislation.

§ 402. Jurisdiction of Bankruptcy Court.—(a) The court of bankrutcy has power to stay all suits pending at the time of the filing of the petition in bankruptcy which are based on claims that are provable in bankruptcy and against which a discharge may be granted.

Subdivision a, sec. 11, of the bankruptcy act provides that: "A suit which is founded upon a claim from which a discharge would be a release and which is pending against the person at the time of the filing of a petition against him shall be stayed until after an adjudication or a dismissal of the petition; if such person is adjudged a bankrupt such action may be further stayed until twelve months after the date of such adjudication, or if within that time such person applies for a discharge then until the question of such discharge is determined."

(b) Bankruptcy courts have jurisdiction to entertain and determine all suits of the trustee that may be necessary to collect and distribute assets of the bankrupt, and to determine all controversies in relation thereto.[2]

(c) A state court does not have concurrent jurisdiction with the bankrupt court where an assignment has been made within four months preceding the adjudication. The jurisdiction of the bankrupt court is exclusive.[3]

[2] In re Sievers, 1 Am. B. R. 117.

[3] In re Smith, 2 Am. B. R. 9.

(d) Jurisdiction of a bankrupt court extends to the property of the bankrupt in another state.[4]

(e) A court of bankruptcy does not have jurisdiction of an action to set aside a conveyance, which is in fraud of creditors, where the defendant is a citizen of the same state in which the bankrupt resides.[5]

(f) Nor has a court of bankruptcy jurisdiction of an action to set aside a fraudulent transfer made more than four months prior to the filing of the petition in bankruptcy.[6]

(g) The bankrupt court has no jurisdiction to determine by a summary proceeding a controversy between the trustee, as such, and an adverse claimant of property, even though the claimant brings the action in that court.[7]

(h) A state court has no right to imprison a debtor for contempt of court for failure to pay alimony when an order has been issued by the bankrupt court staying and enjoining proceedings in such action.[8]

(i) Where the exclusive jurisdictional facts appear the law seems well settled that a court of bankruptcy has power to and should assume jurisdiction where property is in the hands of a state court, and may restrain further action by that court.[9]

(j) The adjudication being *in rem* all parties interested in the *res* are regarded as parties, including creditors and lien-holders.[10]

[4] Markson v. Heney, 4 N. B. R. 165.

[5] See sec. 236. Burnett v. Morris Mercantile Co., 1 Am. B. R. 229.

[6] In re Grahs, 1 Am. B. R. 465.

[7] In re N. Y. Kerosene Oil Co., 3 N. B. R. 125; In re Boansteel, 3 N. B. R. 517; In re Hunt, 2 N. B. R. 540; Ferguson v. Peckham, 6 N. B. R. 569; Smith v. Mason, 6 N. B. R. 1; Marshall v. Knox, 8 N. B. R. 97. (The above decisions were rendered under the Act of 1867, which was different from the present act.) See sec. 23a; In re Fowler, 1 Am. B. R. 637.

[8] In re Houston, 1 N. B. N. 305.

[9] In re Brown, 1 Am. B. R. 107; Cf. In re Mallory, 1 Saw. 88; In re Fuller, 1 Saw. 143; In re Davis, 1 Saw. 260.

[10] Carter v. Hobbs, 1 Am. B. R. 215.

§ 403. Liens Procured in State Courts Void When.—Subdivision f, sec. 67, of the bankrupt act provides "that all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such a levy, judgment, attachment, or other lien, shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid."

§ 404. Procedure to Obtain Possession of Property in Hands of Receiver of State Court.—Where the trustee desires to obtain possession of property in the hands of a receiver of a state court, his course to pursue is to move in the bankrupt court for authority to appear in the state court for an order substituting him as plaintiff in the case, and then to ask for a decree settling the partnership accounts, and an order directing a transfer of the assets to him by the receiver.[11]

§ 405. Power of Bankruptcy Court to Restrain Levy.—The bankruptcy court has the power to restrain the sheriff of the state court from levying on the property of the bankrupt to satisfy a judgment of the latter court, although judgment was obtained prior to the adjudication in bankruptcy.[12]

[11] In re Price, 1 Am. B. R. 606.

[12] In re Mallory, 6. N. B. R. 22. A state court has no jurisdiction of an action against the assignee in bankruptcy for the purpose of enjoining him from collecting a

And to issue an injunction to prevent the sale of a debtor's land under a judgment by the state court. On motion to dissolve upon the ground that the court could not restrain the sale, the motion to dissolve will be denied.[13]

The United States district court in bankruptcy may enjoin mortgagees for a reasonable time from proceeding to foreclose a mortgage, and may order a sale free from incumbrances in special instances where rights of parties are clear.[14]

Where an injunction has been issued out of the circuit court under the equitable jurisdiction auxiliary to that of the district court in bankruptcy, the execution creditor may require the assignee to proceed in the circuit court in equity or invoke the jurisdiction of the court of bankruptcy, testing the question of priority.[15]

§ **406. Lien Enforced in State Court When.**—No lien can be enforced by proceedings in a state court commenced after the petition in bankruptcy is filed, but where jurisdiction has been previously acquired by a state court from force of a valid lien such jurisdiction will not be divested.[16]

It is said that the right to foreclose a mortgage in a state court ceases where the bankrupt court orders a sale of the mortgage property.[17]

§ **407. Jurisdiction of United States Court in Setting Aside Fraudulent Conveyances.**—The United States courts are not divested of jurisdiction over suit brought by the trustee to set aside fraudulent transfers

note. Southern v. Fisher, 16 N. B. R. 414.

[13] In re Lady B. M. Co., 6 N. B. R. 252; Fed. Cas. 7,980.

[14] In re Pitlekow, 1 N. B. N. 234; see exhaustive brief on this subject, 1 N. B. N., p. 234.

[15] In re Haefer, 1 N. B. R. 163.

[16] In re Winnie, 4 N. B. R. 5.

[17] In re DeVore, 16 N. B. R. 56. United States courts have exclusive jurisdiction over all proceedings relating to the estate of the bankrupt, including foreclosures. In re Brinkman, 7 N. B. R. 21. The above case cannot be sustained by the authorities to the extent stated.

of the bankrupt. The trustee is not compelled to proceed in the state court.[18]

§ **408. Jurisdiction in Dissolution of Corporation.**—The bankrupt court is not deprived of jurisdiction by the dissolution of the corporation in a state court before adjudication but after the service of the order to show cause.[19]

The state has power to pass laws for the winding up of a corporation irrespective of the bankrupt act. In this case the jurisdiction of the bankrupt court is not exclusive.[20]

§ **409. Proceedings in State Court Void When.**—All legal proceedings under a judgment within four months of the filing of the petition are void except as to the title of a *bona fide* purchaser under such levy and sale, the proceeds in such case standing as a substitute for the property sold.[21]

§ **410. The Existence of a Bankrupt Law Does Not Suspend State Laws, When.**—(a) The bankrupt laws do not *ipso facto* suspend state laws for the collection of debts, and the jurisdiction conferred upon courts of bankruptcy in this respect is superior but not exclusive as to the state laws.[22]

(b) A voluntary assignment by a debtor, under the insolvent laws of the state of Connecticut, no proceedings having been instituted under the bankrupt act, is not void, although such act is applicable to the case at the time of the assignment. But in case of an actual

[18] Carter v. Hobb, 1 N. B. N., p. 191. Opinion by referee as to the enjoining of further prosecution of a creditors suit to set aside a fraudulent conveyance, see In re Adams, 1 N. B. N., p. 167.

[19] Platt v. Archer, 6 N. B. R. 465.

[20] Chandler v. Siddle, 10 N. B. R. 236; 3 Dill. 477.

[21] In re Kenney, 1 N. B. N. 401.

[22] Chandler v. Siddle, 10 N. B. R. 236.

conflict of jurisdiction, the state law must yield to the national.[23]

(c) Where the assignee and general creditors abandon all claim to incumbered property state courts may subject such property to the satisfaction of the mortgage and in such case the mortgagee is entitled to all remedies notwithstanding the bankruptcy.[24]

(d) After the sale of property by process from a state court the district court will not interfere.[25]

(e) A court of bankruptcy has no power to review the action of a state court in granting alimony to a bankrupt's wife.[26]

(f) The possession of goods by a sheriff under execution levied prior to proceedings in bankruptcy cannot be disturbed by the assignee.[27]

(g) The state court is the proper forum to settle a dispute between the purchaser at an assignee's sale and bankrupt creditors.[28]

(h) A judgment creditor cannot claim the jurisdiction of a court in bankruptcy for the collection of his debt fully secured by the only lien on real estate.[29]

(i) Where acts are done by state courts in the proper exercise of their jurisdiction, which do not conflict with the jurisdiction of federal courts, such acts bind the federal courts.[30]

(j) Property of the bankrupt, held adversely by another under a claim of title, is not to be determined by the court of bankruptcy, nor by a referee.[31]

[23] Maltbie v. Hotchkiss, 5 N. B. R. 485.

[24] Second Nat'l Bk. v. National S. Bk., 11 N. B. R. 49; Cf. Jerome v. McCarter, 94 U. S. 734; McHenry v. LaSociete, etc., 95 U. S. 58.

[25] In re Fuller, 4 N. B. R. 29.

[26] In re Garett, 11 N. B. R. 493.

[27] Marshall v. Knox, 8 N. B. R. 97; In re Weamer, 8 N. B. R. 527; Cf. Shiner v. Huber, 19 N. B. R. 414; Goddard v. Weaver, 6 N. B. R. 440; In re Kerr, 2 N. B. R. 124.

[28] In re Abraham, 1 N. B. N. 281.

[29] In re Johann, 4 N. B. R. 143.

[30] In re Keiler et al., 18 N. B. R. 10; Fed. Cas. 7,647.

[31] In re Carter, 1 Am. B. R. 160.

(k) The mere filing of a petition in involuntary bankruptcy does not take from the state court jurisdiction in the foreclosure of a mortgage.[32]

(l) The circuit court has no jurisdiction to force conveyance to the trustee of property held by mortgagees under a mortgage executed before bankruptcy.[33]

(m) To affect proceedings in state courts the adjudication or discharge of the bankrupt must be pleaded.[34]

(n) It is optional with state courts in all cases whether they will entertain jurisdiction in matters concerning bankruptcy.[35]

(o) Congress has no power to impose upon state courts any duties in connection with inforcement of a bankrupt act.[36]

(p) The lien of an attachment or the lien of the creditor upon property conveyed in fraud of creditors may be enforced in other courts where proceedings were commenced before the bankruptcy proceedings.[37]

(q) The United States circuit court has no jurisdiction to set aside a fraudulent transfer of a bankrupt's property at the suit of a trustee.[38]

(r) The failure of a bankrupt to obtain his discharge entitles creditors to proceed at law.[39]

(s) The jurisdiction of state courts is not divested in suits involving the right to real or personal property of the bankrupt or debts owing to his estate by operation of the bankrupt act.[40]

(t) Where cases are pending in the state court the bankruptcy of one party does not affect the proceed-

[32] In re Irving, 14 N. B. R. 289.
[33] Heath v. Shaffer, 1 N. B. N. 291.
[34] Serra v. Hoffman, 17 N. B. R. 124.
[35] Shearman v. Bingham, 7 N. B. R. 49.
[36] Goodall v. Tuthill, 7 N. B. R. 193; 3 Biss. 219.
[37] Mason v. Warthen, 14 N. B. R. 346.
[38] Goodier v. Barnes, 1 N. B. N. 383.
[39] Dingee v. Becker, 9 N. B. R. 508.
[40] Eyster v. Gaff, 13 N. B. R. 546; 91 U. S. 521.

ings unless brought to the notice of the state court in an appropriate proceeding.[41]

(u) The state court has no power to impeach a bankruptcy discharge upon any of the grounds where the United States court has jurisdiction.[42]

(v) The distribution in bankruptcy cannot be interfered with by garnishment in the state court.[43]

§ 411. Jurisdiction of State Court Where Assignee a Party.—The bankruptcy act does not give the United States district courts jurisdiction over actions and suits incident to the collection and reduction to money of bankrupt's estates where the actions arise between the trustees and strangers who claim property acquired or claimed by the trustees.[44]

A state court has jurisdiction in a suit by an assignee where the equity sought is recognized by the laws of the state in which the suit is pending, and not the creature of the bankrupt act.[45]

A state court will entertain jurisdiction of an action by an assignee to set aside a conveyance alleged to have been made in violation of the bankrupt act.[46]

The reason a state court will entertain jurisdiction of an action by an assignee is that the bankrupt act is simply the source of the assignee's title. He does not derive his jurisdiction as such from that court.[47]

Property fraudulently disposed of by a bankrupt may be recovered in a state court in a suit by the assignee.[48]

[41] Bracken v. Johnston, 15 N. B. R. 106.
[42] Alston v. Robinett, 9 N. B. R. 74.
[43] In re Bridgman, 2 N. B. R. 284.
[44] Hicks v. Knost, 1 N. B. N. 336.
[45] Voories v. Crisbie, 8 N. B. R. 152.
[46] Voories v. Crisbie, 8 N. B. R. 152.
[47] Dambmann v. White, 12 N. B. R. 438.
[48] Cook v. Waters, 9 N. B. R. 155.

But a state court has no power to compel an assignee to become a party.[49]

In a proceeding by an assignee in a state court the court, it is said, may properly examine into the jurisdiction of the bankrupt court.[50]

State courts have jurisdiction of suits by the trustee in bankruptcy to enforce collection of debts due the bankrupt and also to determine controversies as to title of property held adversely by third persons and claimed by the trustee.[51]

An assignee in bankruptcy submitting himself to the jurisdiction of a state court cannot after decree object to the power of the court.[52]

But a state court may entertain an action against an assignee in bankruptcy for the wrongful taking of property not in the possession of the bankrupt and belonging to a stranger.[53]

§ **412. Suspension of State Laws.**—Owing to the constitutional power conferred upon congress in regard to uniform bankruptcy laws, when it has acted, it follows that all state legislation that encroaches upon the domain of national legislation in this regard is suspended.

The bankruptcy law merely suspends the operation of state insolvent laws in so far as they come in conflict with the bankruptcy law or intrude upon its province.[54]

But unless clearly so designed jurisdiction conferred by the bankrupt act upon United States courts does not oust state courts of jurisdiction.

[49] Serra v. Hoffman, 17 N. B. R. 124.

[50] Isee v. Stuart, 16 N. B. R. 191.

[51] Heath v. Shaffer, 2 Am. B. R. 98.

[52] Scott v. Kelley, 12 N. B. R. 96.

[53] Leighton v. Harwood, 12 N. B. R. 360. Proceedings in bankruptcy are in their nature equitable proceedings. In re Wallace, 2 N. B. R. 52.

[54] In re Wright & Co., 1 N. B. N. 428. Under the law of 1867 a general assignment for the benefit of creditors without preference was void. Platt v. Pres-

When a debtor is adjudged a bankrupt, all proceedings against him in a state court must stop, if the subject matter can be proven against his estate in bankruptcy; and no creditor who holds a claim against the estate, which might be proven in bankruptcy, whether the debt is secured or not, can enforce such debt in a state court, except by the permission of the district court.[55]

§ 413. General Effects of Bankrupt Law and Proceedings Thereunder.—(a) The bankrupt act of 1898 operates, from the time of its passage, upon the property of debtors who are subsequently adjudicated bankrupts, and also upon the rights of creditors as well in equity as at law existing at the time of its passage.[56]

(b) A payment made by a debtor to his creditor after the filing of the petition is not good as to the assignee, though made in good faith and without knowledge of the bankruptcy proceedings.[57]

(c) Adjudication in bankruptcy does not annul or in any manner affect the existence and validity of *bona fide* liens which are not fraudulent as to creditors, and not in fraud of the provisions of the bankrupt act.[58] In

ton, 19 N. B. R. 241. The National bankruptcy laws supersede state insolvency laws. In re Richard, 1 N. B. N. 487. Secs. 2662-2683 inclusive, Rev. Stat. of Indiana 1881, 2 Burn's Rev. Stat. 1894, secs. 2899-2920 inclusive, regulating assignments in that state are superseded by the bankrupt act. In re Smith, 2 Am. B. R. 9.

[55] In re Central Bk., 6 N. B. R. 207. Bankruptcy law of 1867 was held not to oust a probate court of jurisdiction in the administration of the estate of a deceased partner where a petition was subsequently filed to put the firm into bankruptcy. In re Daggett, 8 N. B. R. 433. A suit brought within four months before filing the petition in bankruptcy and all proceedings thereunder are void. Boothe v. Nickerson, 1 N. B. N. 476; In re Winn, 1 N. B. R. 131.

[56] In re Adams, 1 Am. B. R. 94. (Opinion of referee).

[57] In re Opinion of Attorney General, 9 N. B. R. 117.

[58] See Liens sec. 414. The vesting of title of the bankrupt's property in the trustee places him in the same position the bankrupt stood in regard to the valid rights, equities and liens of creditors. In re Bozeman, 1 N. B. N. 479.

some cases, however, the mode of enforcing and the forum are changed.

(d) Nor are the rights and interests of third parties who claim under title adverse to the trustee affected.[59]

(e) Where a bankrupt purchases property on condition that the title shall not vest in him until the entire purchase price is paid, the seller has a valid lien upon the property for such amount of the purchase money as is due and unpaid at the time of filing the petition.[60]

§ **414. Effect of Bankruptcy as to Liens.**—(a) Legal and *Bona Fide* Liens Protected.

Subject to certain exceptions set forth in a bankrupt act the bankrupt court cannot divest prior liens on the debtor's property, and if possession is taken by the bankrupt court it is subject to such liens.[61]

Sec. 67d provides if the liens given are accepted in good faith and not in contemplation of, or in fraud of the bankruptcy act, and for a present consideration and have been duly recorded when necessary to impart notice, are not affected by the bankruptcy act.[62]

Liens *bona fide* under the state law are entitled to priority in bankruptcy.[63]

[59] See sec 410.

[60] In re Bozeman, 1 N. B. N. 479. (Opinion by referee). Where a bankrupt is in possession of property under a contract for a conditional sale and is not to have title until the goods are paid for, such property is not an asset of the bankrupt and the title does not pass to the trustee. In re McKay, 1 Am. B. R. 292. A claimant to property, held by a trustee, who contends that the bankrupt held the property under a conditional contract of sale where the statutory provisions with reference to the filing of the contract have not been complied with, cannot set up title as against the trustee. In re Youkon Woollen Co., 1 N. B. N. 420. (Opinion by referee).

[61] Bank v. Katz, 1 Am. B. R. 19.

[62] Carter v. Hobbs, in re, 1 Am. B. R. 215, note.

[63] Reed v. Bullington, 11 N. B. R. 408. All valid liens existing against the bankrupt's property when proceedings are commenced will be protected. In re Greenville, 9 N. B. R. 29. Liens perfected before the commencement of bankruptcy proceedings are effective as to the assignee (trustee). In re Smith, 1 N. B. R. 169.

A creditor securing a lien by diligence will be protected in the bankrupt court in the absence of collusion;[64] and where a lien secured more than four months prior to the commencement of bankruptcy proceedings will be protected in a court of bankruptcy notwithstanding the discharge.[65]

Courts should preserve the lien by creditors even where they have some doubts about the solvency of the debtor.[66]

An adjudication in bankruptcy operates *in rem* and from the moment of the adjudication of the bankruptcy the bankrupt's estate is *in custodia legis*. This custody no other court nor individual can interfere with. An attempt to interfere with such custody in any other court is a contempt.[67]

(b) Judgment Liens in State Court—Valid and Invalid.

(1) Valid.—Valid mortgages and judgments which are liens upon real estate of the bankrupt will be protected by the court of bankruptcy, under an order of sale by the trustee, and the title be conveyed free of liens, the liens attaching in such case to the proceeds.[68]

Where a creditor obtains a judgment more than four months prior to filing a voluntary petition in bankruptcy by the judgment debtor, but does not make his levy and procure his lien until within four months before filing such petition, the judgment is a valid and subsisting lien against the bankrupt's estate.[69]

A judgment creditor's claim though obtained by fraud against the debtor is not a subject of attack by the assignee; it is *res adjudicata*,[70] and if obtained

[64] Trimble v. Williamson, 14 N. B. R. 53.
[65] Stoddard v. Lock, 9 N. B. R. 701.
[66] In re Kerr, 2 N. B. R. 388.
[67] Carter v. Hobbs, 1 Am. B. R. 215.
[68] In re Worland, 1 Am. B. R. 450.
[69] In re Collins, 2 Am. B. R. 1.
[70] Stilwell v. Walker, 16 N. B. R. 569.

without fraud or collusion is conclusive as to the amount.[71]

And a judgment and a levy in the usual course of practice where there is no collusion with reference to priority is valid against the assignee.[72]

(2) Invalid.—Sec. 67 of the bankruptcy act, providing that liens obtained by legal proceedings within four months prior to the filing of a petition in bankruptcy becomes null and void upon adjudication, applies only to cases of involuntary bankruptcy and not to cases of voluntary bankruptcy.[73]

Where a creditor obtains a lien by virtue of a judgment and subsequent levy within four months prior to the filing of a petition in bankruptcy by the judgment debtor, the judgment is dissolved by the subsequent adjudication in bankruptcy. Paragraph c, sec. 7, of the bankrupt act, provides that a lien created by, or obtained in, or pursuant to any suit, or proceeding at law, which was begun against a person within four months before the filing of a petition in bankruptcy, such judgment shall be dissolved by the adjudication of such person to be a bankrupt if it appears that the lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference. Several facts must exist before a lien may be dissolved under this section; (1) it must be created by, or obtained in, or pursuant to a suit or proceeding at law; (2) such suit or proceeding must have begun within four months before the filing of the petition in bankruptcy; (3) it must appear that the lien was obtained and permitted when the bankrupt was

[71] Catlin v. Hoffman, 9 N. B. R. 342.

[72] Dolson v. Kerr, 16 N. B. R. 405. A creditor obtaining judgment before bankruptcy which becomes a lien on the debtor's property has priority in the proceeds of the bankrupt's estate as against the fees and cost of bankrupt proceedings. In re Hambright, 2 N. B. R. 157.

[73] In re Easley, 1 Am. B. R. 175.

insolvent; (4) the existence and enforcement of the lien must work a preference.[74]

Judgments in favor of creditors in fraud of the bankrupt act are invalid as well as proceedings thereunder.[75]

And where a judgment is not a valid lien under the laws of the state it will not be a lien in bankruptcy proceedings.[76]

To render a judgment void it must be shown that the plaintiff knew at the time it was entered that the debtor had executed an assignment.[77]

The lien of a judgment procured within four months prior to bankruptcy is void in Ohio.[78]

A judgment may be impeached under the bankrupt act by showing that it was designed to avoid the equal distribution of a debtor's estate.[79]

Fraud in the obtaining of a judgment in a foreign jurisdiction may be shown but not so as to domestic judgments.[80]

A judgment levy without knowledge or collusion of the debtor when the debtor was insolvent is held to be suffering or permitting a preference and therefore an act of bankruptcy.[81]

(3) Judgment by confession.

A creditor may secure a lien by a confession of judgment where he has no knowledge of the failing circumstances of the debtor.[82]

The preference secured by a creditor with a judgment note must relate to the time of the judgment.[83]

[74] In re Collins, 2 Am. B. R. 1.
[75] Buchannan v. Smith, 16 Wall. 277.
[76] In re Cozart, 3 N. B. R. 126.
[77] Shaffer v. Fritchery, 4 N. B. R. 179.
[78] In re Fellerath, 1 N. B. N. 292.
[79] Michaels v. Post, 21 Wall. 398.
[80] Michaels v. Post, 21 Wall. 398.
[81] In re Moyer, 1 N. B. N. 260.
[82] In re Weeks, 4 N. B. R. 116.
[83] Golson v. Nieheff, 5 N. B. R. 56. As to the state of judgment notes and confessions of judgment under the bankrupt act of 1898 see 1 N. B. N. 414.

(4) When not a lien.

A judgment creditor obtaining a lien after an assignment for the benefit of creditors without preference obtains no lien on the property assigned although the assignment is subsequently set aside by the assignee in bankruptcy.[84]

A judgment creditor has an option whether he will prove his debt or rely on his judgment lien.[85]

(c) Execution Liens—Valid and Invalid.

(1) Valid.—A lien upon property of the bankrupt acquired more than four months before the filing of the petition in bankruptcy is valid, and not affected by a discharge.[86]

And so where the lien is given by an execution levy and placing a custodian in charge the creditor has a lien in priority over the marshal in proceedings in bankruptcy.[87]

Creditors obtain a valid lien by execution against the property of the debtor when they have no reason to believe the debtor insolvent.[88]

Levy made by a sheriff after filing a petition in bankruptcy on a judgment before creates a lien and the assignee may sell and hold the proceeds subject to the liens as declared by the court.[89]

To invalidate the lien it must be shown that the debtor was insolvent and that the creditor knew of the insolvency at the time of the levy.[90]

An execution issued and in the hands of the sheriff before proceedings in bankruptcy gives the creditor a

[84] Belden v. Smith, 16 N. B. R. 302.

[85] Heard v. Jones, 15 N. B. R. 402.

[86] In re Blumberg, 1 Am. B. R. 633.

[87] In re Hughs, 11 N. B. R. 542; Cf. In re Hull, 18 N. B. R. 1; but see Davis v. Anderson, 6 N. B. R. 154.

[88] In re Black, 2 N. B. R. 65; In re Weeks, 4 N. B. R. 116; Swope v. Arnold, 5 N. B. R. 148.

[89] Pennington v. Sole, 1. N. B. R. 157.

[90] Armstrong v. Rickey, 2 N. B. R. 150.

lien as against general creditors where a lien attaches on a delivery of the execution to the sheriff.[91]

An execution against a debtor where the creditor has no reasonable ground for believing the debtor to be insolvent is valid.[92]

A lien created by an execution issued within four months before the filing of a petition in bankruptcy on a judgment obtained two years before is held to be valid and enforcible.[93]

Collusion is not shown by the fact that an affidavit was filed and execution issued and levied on the day proceedings in bankruptcy were commenced.[94]

(2) Invalid.—Where before a levy is made no lien exists it will be ineffective as against the bankrupt funds in the hands of an assignee where bankruptcy proceedings are commenced before levy.[95]

Moneys obtained by a sheriff under execution sale a month prior to the filing of a petition in bankruptcy belong to the trustee.[96]

Where a creditor obtained a judgment and levied his execution upon the personal property and the debtor became a bankrupt and was discharged, the judgment creditor may withdraw his proof of claim on petition and proceed against property sold by the debtor before bankruptcy.[97]

(d) Liens Secured by Creditor's Bill.

A suit by a creditor to set aside a fraudulent conveyance is in legal effect the levying of an equitable execution upon property which an execution at law is not effectual to reach, and such an equitable execution is a lien obtained pursuant to legal proceedings within

[91] Wilson v. Childs, 8 N. B. R. 527.
[92] In re Black, 2 N. B. R. 65.
[93] In re Easley, 1 N. B. N. 230.
[94] Witt v. Hereth, 13 N. B. R. 106.
[95] In re Mackintosh, 2 N. B. R. 158.
[96] In re Kenney, 1 N. B. N. 401.
[97] Phelps v. Bowdoin, 14 N. B. R. 43.

the terms of subdivision f, sec. 67, of the bankrupt act.[1]

Under an action brought to reach choses in action or property not subject to execution a lien is acquired by the commencement of the suit.[2]

A creditor's bill secures a lien in favor of creditors as against property purchased by the debtor in his wife's name.[3]

A commencement of an action by a creditor's bill gives to the creditor an equitable lien upon the property and choses in action of the debtor whether such property is in his hands or in the hands of a third party as fraudulent transferee.[4]

(e) Lien of Mortgagee in Possession.

Mortgagees of personal property in possession thereof at the time of the institution of bankruptcy proceedings cannot be compelled by a court of bankruptcy in a summary proceeding to surrender such property.[5]

Where a creditor calls in question the validity of a mortgage, executed by a bankrupt and held by another creditor, it is the duty of the bankrupt court to exercise jurisdiction over the questions involved and if necessary declare the mortgage null and void.[6]

[1] In re Adams, 1 Am. B. R. 95. But the lien must be secured before adjudication. Winters v. Claitor, 18 N. B. R. 533.

[2] Johnson v. Rogers, 15 N. B. R. 1. Where a creditor commenced a suit against a bankrupt on April 12, '98, obtained judgment January 13, '99, under which the lien dated back to November 21, '98, that being the first day of that term of court, and on January 23, '99, a creditor's suit based on the judgment was commenced within four months of the time when the bankrupt law went into effect, preceding the adjudication in bankruptcy, it was held that the sheriff who had made a levy upon the property pursuant to the judgment should be ordered to turn over the property to the trustee. In re Fellerath, 2 Am. B. R. 40.

[3] Winter v. Claitor, 18 N. B. R. 533.

[4] Stuart v. Isidor, 1 N. B. R. 129.

[5] In re Buntrock Clothing Co., 1 Am. B. R. 454.

[6] In re Christy, 3 How. 292; Norton v. Boyd, 3 How. 426; Collier on Bankruptcy, pp. 12-17.

(f) Lien Secured by Attachment.

An attachment execution within four months of a bankruptcy of the defendant who is insolvent and the lien acquired thereunder is void and the trustee has a right to the property.[7]

A bankruptcy law does not affect any right acquired by proceeding *in rem* or partly *in rem* brought at an earlier date than four months next before filing petition. A lien acquired by attachment more than four months before the filing of a petition is not affected by the discharge in bankruptcy.[8]

The lien obtained by an attachment relates back to the commencement of the attachment and not the date of the judgment.[9]

The lien acquired by an attachment in a suit commenced a year before the filing of a petition is not destroyed by an adjudication in bankruptcy.[10]

In order to render an attachment null and void as against the bankrupt law the debtor must be insolvent at the time of the attachment.[11]

An attachment within four months prior to the filing of a petition is void where the debtor was insolvent at the time of issuing the attachment where the bankrupt was subsequently adjudicated a bankrupt.[12]

[7] Peck Lumber Co. v. Mitchell, 1 N. B. N. 262.

[8] In re Blumberg, 1 N. B. N. 238.

[9] Hudson v. Adams, 18 N. B. R. 102.

[10] In re DeLue, 1 Am. B. R. 387.

[11] In re Friedman, 1 Am. B. R. 510. Where an attachment suit was commenced against the bankrupt more than four months prior to the filing of his petition but the attachment of the property was not made within four months of the filing of such petition, the subsequent adjudication of the debtor as a bankrupt annulled the lien of the attachment where the debtor was insolvent at the time of the attachment, and the attaching creditor is entitled to no preference. In re Friedman, 1 Am. B. R. 510.

[12] Peck Lumber Mnfg Co. v. Mitchell, 1 Am. B. R. 701. A commenced an action against a debtor and levied an attachment upon his land. Another creditor obtained judgment afterwards and levied execution on the same land. The debtor filed a petition in bankruptcy, and sale of the land was enjoined. It was sold

(g) Lien of Pledge.—Where collaterals have been pledged by a bankrupt as a security for debts the security will be protected unless the pledge is preferential in violation of the bankrupt act.[13]

A creditor holding a pledge from the bankrupt prior to the filing of the petition and not in contemplation thereof will be entitled to priority against general creditors.[14]

(h) Lien of Landlord for Rent.—The landlord's lien for rent is protected in bankruptcy.[15]

A bankrupt is absolved from all contractual relations and personal obligations to the landlord growing out of a lease.[16]

(i) Power of Bankrupt Court Over Liens.—The district court has jurisdiction to determine the validity of liens upon and the fraudulent conveyances of the property of the bankrupt, and may grant the same relief which state courts could grant, and this without the consent of the secured creditor.[17]

A bankrupt court has power to sell incumbered property and distribute among lienholders.[18]

A lien creditor by proving his debt and asserting his claim in the bankrupt court and participating in the

by the assignee, and the amount received was enough to pay both judgments. Held, that A was entitled to priority, as his judgment lien related back to the service of the attachment. Hudson, Ass. v. Adams, 18 N. B. R. 102; 3 Cin. Law Bul. 1,066; Fed. Cas. 6,832.

[13] In re Peebles, 13 N. B. R. 149.

[14] In re Ohio Co-operative Shear Co., 1 N. B. N. 477. The lien of a landlord for rent will have a preference in bankruptcy. Barne's Appeal, 9 N. S. 521.

[15] In re Wyne, 4 N. B. R. 5; Neator v. Everet, 10 N. B. R. 421.

[16] In re Jefferson, 1 N. B. N. 288. In Pennsylvania the landlord is entitled out of the proceeds of personal property upon the demised premises in the hands of a receiver or trustee in bankruptcy to priority in payment of rent due at the time of filing the petition in bankruptcy not exceeding one year. In re Garson, 1 N. B. N. 315. A claim for rent under Pennsylvania statutes is entitled to priority. In re Cronsin, 1 N. B. N. 474; In re Shilliday, 1 N. B. N. 475.

[17] Carter v. Hobbs, 1 Am. B. R. 215.

[18] In re Salmons, 2 N. B. R. 19.

bankruptcy proceedings is estopped from enforcing his lien in the state court.[19]

A lien given by statute may be waived by a surrender of property to the assignee without claim for a lien.[20]

§ **415. Effect of Bankruptcy as to Mortgages and Mortgage Foreclosures.**—(a) Mortgages When Valid.

A mortgage executed four months and four days and filed less than two hours before a voluntary petition in bankruptcy by the mortgagor is a valid lien as to general creditors.[21]

(b) Mortgages When Void.

A mortgage made after bankruptcy proceedings were commenced may be summarily set aside on application of the assignee,[22] but where a mortgagor conveys in fraud of the bankrupt law actual notice must be brought home to the mortgagee.[23]

So also if the mortgage is executed within four months of the filing of a petition in bankruptcy it is void.[24]

A chattel mortgage void as against creditors will also be void as against the bankrupt's estate.[25]

Where a creditor of a bankrupt holds a mortgage securing an antecedent indebtedness the mortgage being executed within four months before the filing of the petition in bankruptcy he will not be entitled to prove his claim until he has surrendered his mortgage.[26]

[19] Spilman v. Johnson, 16 N. B. R. 145.

[20] In re Mitchell, 8 N. B. R. 47. Money on deposit in the hands of a banker is not subject to a lien in favor of the banker as against the assignee. In re Warner, 5 N. B. R. 414. Liens in favor of laborers are not inhibited liens or preferences under the bankrupt act. In re Kerby-Dennis Co., 1 N. B. N. 337.

[21] In re Wright, 1 N. B. N. 381.

[22] In re Sims, 16 N. B. R. 251.

[23] Boothe v. Brooks, 12 N. B. R. 398.

[24] Hipskind v. Murphy, 1 N. B. N. 310.

[25] In re Leigh Bros., 1 N. B. N. 425. (Opinion by referee.)

[26] In re Leeman, 2 Am. B. R. 52. (Opinion by referee.)

A mortgage and bill of sale of personal property, void as to creditors under the statute of frauds of the state, are void and convey no title as against an assignee.[27]

Where a debtor gives a mortgage to a creditor who has reasonable cause to believe him insolvent it is void under the bankrupt act.[28]

(c) Foreclosure in State Court.

The mere filing of a petition in voluntary bankruptcy does not divest the jurisdiction of the state court in a proceeding to foreclose a mortgage.[29]

A mortgagee may proceed to foreclose in a state court where the assignee does not seek to redeem,[30] but he must not submit himself to the jurisdiction of the bankruptcy court by proving his debt.[31]

Foreclosure of a mortgage and the sale of the premises pending proceedings in bankruptcy without proof of the mortgage debt or leave of the court first obtained are invalid and in contempt of the jurisdiction and authority of the bankrupt court.[32]

Proceedings to foreclose a mortgage may be stayed on the application of the assignee,[33] but a foreclosure suit in the state court will not be interfered with by the United States court where there is no surplus over and above the mortgage debt.[34]

A second mortgagee is not entitled even with the consent of the first to take and hold possession of the mort-

[27] Edmondson v. Hyde, 7 N. B. R. 1.

[28] Hall v. Wager, 5 N. B. R. 181.

[29] In re Irving, 14 N. B. R. 289.

[30] Brown v. Gibbons, 14 N. B. R. 407; McKay v. Funk, 13 N. B. R. 334.

[31] Hatcher v. Jones, 14 N. B. R. 387. A mortgagee is not allowed to prove a claim without a surrender of his mortgage security. In re Leeman, 1 N. B. N. 331. (Opinion by referee.)

[32] Phelps v. Sellick, 8 N. B. R. 390.

[33] Markson v. Haney, 12 N. B. R. 484; see also In re Snedaker, 3 N. B. R. 155.

[34] In re Holloway, 1 N. B. N. 264.

gaged property as against an assignee nor to appropriate the rent.[35]

A trustee cannot take possession of mortgage goods in the hands of mortgagees before bankruptcy proceedings were begun by summary proceedings.[36]

Failing to join the trustee in a mortgage foreclosure commenced after the adjudication in bankruptcy but before the appointment of a trustee does not affect the trustee, and a purchaser at such sale would not obtain a title free from infirmity.[37]

A trustee must assert his rights in the state court where mortgaged property of the bankrupt is being sold under foreclosure, and where the holder of the mortgage has taken possession of the property before the institution of proceedings in bankruptcy against the mortgagor and brought suit for foreclosure he cannot be restrained by a bill in equity in the bankruptcy court.[38]

A mortgagee of chattels has no right to foreclose without permission of the court of bankruptcy, unless some action is commenced to make such foreclosure in a state court which obtains jurisdiction over the chattels, or unless the mortgagee, or the officer making the chattel mortgage sale, gets exclusive possession before adjudication.[39]

§ 416. Injunction in Bankruptcy Proceedings—When Granted and When Not.—(a) When Granted General.

A court of bankruptcy has power to enjoin proceedings in the state court where the debtor has been ad-

[35] Hutchings v. Muzzy Iron Works, 8 N. B. R. 458.

[36] In re Buntlock Clothing Co., 1 N. B. N. 291.

[37] Mills v. Kierman, 1 N. B. N. 410.

[38] Heath v. Shaffer, 1 N. B. N. 399.

[39] In re Brooks, 1 Am. B. R. 531.

judicated a bankrupt; (1) in a foreclosure proceeding until the validity of the mortgage is determined;[40] (2) in a proceeding in a state court to obtain judgment and execution; (3) to enjoin creditors from taking proceedings in the state court affecting the possession of the assignee by writ of sequestration;[41] (4) to restrain proceedings in the state court pending the question of discarge of the bankrupt;[42] (5) to restrain the sheriff from levying on the property of the bankrupt on a judgment prior to adjudication;[43] (6) to restrain an action of trover against a marshal for taking possession of the bankrupt's property where the plaintiff claims the goods taken.[44]

But a United States district court will not restrain by injunction proceedings in a state court until the bankruptcy proceedings are pending.[45]

Nor where a creditor is selling under an execution an alleged homestead.[46]

Nor where proceedings *ex delicto* are pending against a bankrupt in a state court growing out of fraud.[47]

Nor to stay proceedings on an order to show cause why the bankrupt should not be punished for contempt in proceedings supplemental to execution.[48]

Where the bankrupt does not apply for a stay of proceedings against him after his adjudication the judgment will be valid in the absence of fraud.[49]

An injunction should not be issued where it appears that the real purpose of the injunction is to tie up the

[40] In re Kerosene Oil Co., 2 N. B. R. 164.
[41] Hewett v. Norton, 13 N. B. R. 276.
[42] In re Thomas, 3 N. B. R. 7.
[43] In re Mallory, 6 N. B. R. 22.
[44] Hudson v. Schwab, 18 N. B. R. 480.
[45] In re Richardson, 2 N. B. R. 74.
[46] In re Hunt, 5 N. B. R. 493.
[47] Horton v. Harlan, 7 N. B. R. 238.
[48] In re Hill, 2 N. B. R. 53.
[49] Cutter v. Evans, 11 N. B. R. 448.

proceeds of a sale until bankruptcy proceedings can be instituted.[50]

(b) Against Sale on Execution.—The court may enjoin the sale of goods under an execution from a state court and direct the trustee to take possession and sell the goods with leave to judgment creditors to apply for an order to have their lien satisfied out of the proceeds;[51] and to enjoin the sale of the debtor's land under a proceeding in the state court.[52]

An injunction should issue against creditors who obtained judgment against a debtor pending the bankruptcy proceedings and are selling his property after adjudication.[53]

General creditors have power to enjoin the sale of property of an insolvent debtor under process of a state court until such time as an involuntary petition can be filed against the debtor.[54]

The court may restrain further proceedings by a sheriff under an execution on a judgment in a state court even though the recovery antedates the adjudication.[55]

(c) Against Judgment.—An injunction against a judgment where the creditor has reasonable cause to believe the debtor is insolvent may be granted.[56]

(d) Against Proceedings in State Court.—A district court in bankruptcy has plenary power to enjoin all proceedings in a suit in a state court founded on a debt to which a discharge would be a release. Whether the injunction could issue or continue is a matter of discretion.[57]

[50] Vietor v. Lewis, 1 Am. B. R. 667.
[51] In re Schnepf, 1 N. B. R. 190.
[52] In re Lady Byrn Mining Co., 6 N. B. R. 252.
[53] In re Wallace, 2 N. B. R. 52.
[54] Blake v. Valentine Co., 1 Am. B. R. 372.
[55] In re Northrup, 1 Am. B. R. 427.
[56] Haskell v. Ingall, 5 N. B. R. 205.
[57] In re Globe Cycle Works, 1 N. B. N. 421.

Injunctions against proceedings in the state court should usually be granted if the suit is not yet in judgment, and even after judgment if the rights of general creditors not parties to the suit will be jeopardized by further proceedings in the state court, or the judgment is founded on a transaction which is an act of bankruptcy, or a fraud on creditors or the bankrupt law; but in the absence of either or both of these elements it should never be granted after the judgment has ripened into an execution sale, if the state court has or can be given jurisdiction of all the parties interested in this distribution.[58]

[58] Globe Cycle Works, 1 N. B. N. 421. Under the bankrupt act of 1898 the power of the bankrupt court to restrain proceedings in the state court may be summarized as follows: (1) Where the debts are dischargeable in bankruptcy proceedings in state courts which would result in the arrest of the bankrupt may be restrained, for contempt of court, 1 N. B. N. 60; for contempt of court in refusing to pay alimony, in re Houston, 94 Fed. 119; where under statute in an action for labor a body execution might issue, in re Grist Buffalo Review, Oct. 31, 1898; and when the cause of action was a claim for loss of services to a father by reason of seduction, in re Sullivan, 1 N. B. N. 380; (2) injunction may issue to restrain suits for debt in personam at least prior to judgment; to restrain proceedings supplementary to execution based on a judgment in personam; in re Spencer, 1 N. B. N. 154; in re Kletchka, 92 Fed. 901; to restrain execution sales from sheriffs, Blake v. Francis Valentine Co., 89 Fed. 691, 94 Fed. 793; but see Victor C. Lewis, 24 Misc. (N. Y.) 515; (3) where a sale has already taken place the issuance of an injunction is rarely exercised, in re Easley, 93 Fed. 419; in re Meyers, 1 N. B. N. 293; in re Adams, 1 N. B. N. 167; (4) where proceedings are in rem and an injunction has issued as in re Nathan, 92 Fed. 590, where a stock in trade under a chattel mortgage which was alleged to be an act of bankruptcy. However, in Heath v. Shaffer, 93 Fed. 647, Judge Shiras refused to restrain further proceedings by a holder of chattel mortgage who had taken possession of the bankrupt's property before the institution of proceedings in bankruptcy and was proceeding to foreclose against the bankrupt and the trustee. Injunctions have also been issued to restrain foreclosures of real property in re Pitlekow, 92 Fed. 901; in re Holloway, 93 Fed. 638; in re Gutwillig, 90 Fed. 481; in re Agins, 1 N. B. N. 180; 93 Fed. 1018; (5) the Federal courts have been almost unanimous in restraining further proceedings where the bankrupt has made a general assignment, in re The Leidigh Carriage Co., 1 N. B. N. 387; Davis v. Bohle, 92 Fed. 325; the reason being apparently that the general assignment is an act of bankruptcy, and therefore, a fraud on the law and on creditors. Referee Hotchkiss in re Globe Cycle Works, after a review of the cases relating to in-

Even if a judgment provides that execution shall not issue until the further order of court where the judgment is entered after the bankruptcy proceedings are commenced it should be stayed.[59]

On the petition of creditors after adjudication and before the appointment of an assignee an injunction may issue restraining attaching creditors from further proceedings against the property.[60]

(e) Against Foreclosure Proceedings.—A bankrupt court on the petition of the trustee may restrain a state court from proceeding in an action commenced after adjudication where the purpose of the suit is the appointment of a receiver and foreclosure until the validity of the mortgage is determined.[61]

This power is only vested in the circuit court or district court where the bankruptcy proceedings are pending.[62]

junctions against proceedings in state courts, under the law of 1898, summarizes the law upon this subject as follows: The injunction, after adjudication, is always discretionary and, provided the cause of action is one dischargeable in bankruptcy, should usually be granted: (1) If the bankrupt is threatened with arrest, or will be needlessly harassed; (2) if the suit is not yet in judgment, and (3) even after judgment if (a) the rights of the general creditors not parties to the suit will be jeopardized by further proceedings in the state court, or (b) the judgment is founded on a transaction which is an act of bankruptcy or a fraud on creditors or the law; but, in the absence of either or both of the latter elements (a or b), it should never be granted after the judgment has ripened into an execution sale, provided the state court has or can be given jurisdiction of all parties interested in the distribution, including the general creditors represented by the trustee in bankruptcy. It was frequently held under the law of 1867 that creditors could be restrained from the entry of judgment on provable debts and that sheriffs could be enjoined from making sales after executions thereon. In re Schnepf, Fed. Cas. No. 12471; in re Mallory, Fed. Cas. No. 8991; in re Bloss, 4 N. B. R. 147; Irving v. Hughes, 2 N. B. R. 61. It was however doubted whether a Federal court should interfere with the proceeds of a sale already had. Appeal of Biddle, 68 Pa. St., 13; Wild v. O'Brien, sheriff, 4 Alb. L. J., 364.

[59] McKay v. Funk, 13 N. B. R. 324.

[60] In re Ullrich, 8 N. B. R. 15; Walker v. Siegel, 12 N. B. R. 394; in re Fuller, 4 N. B. R. 29.

[61] In re Kerosene Oil Co., 2 N. B. R. 164.

[62] Markson v. Heney, 4 N. B. R. 165.

(f) Against Supplementary Proceedings.—Where proceedings supplementary to execution have been instituted upon a judgment against a person afterwards adjudged a bankrupt and another person jointly indebted with him, the proceedings may be stayed by order of the referee in bankruptcy so far as the bankrupt is concerned; but there is no jurisdiction as to the other joint debtors. And in such case it is immaterial that the supplementary proceedings were prior to the passage of the bankrupt act.[63]

The supplementary proceedings are a prosecution of the bankrupt in a state court and are subject to subdivision a, sec. 11, of the bankrupt act. The bankrupt act contemplates proceedings by all the creditors under clause 9, subdivision a, sec. 7, and supplementary proceedings are not of such character.[64]

(g) Against Assignments.—The bankruptcy court has jurisdiction to restrain proceedings in assignment in a state court.[65]

The court may restrain a trustee or assignee from disposing or interfering with property that came into his hands under a general assignment.[66]

(h) Effect of Restraining Order Under § 11.—The effect of a restraining order under sec. 11 granted *ex parte* with permission to move to vacate at any time is in the nature of a show cause and the party restrained becomes a party to the proceeding in bankruptcy, even before adjudication for the purpose of moving to vacate the order granted.[67]

Proceedings pending in a state court will not be

[63] In re DeLong, 1 Am. B. R. 66.

[64] In re Adams, 1 Am. B. R., 94, 105. Supplementary proceedings pending at the time of adjudication will be stayed by a court of bankruptcy. In re Kletchka, 1 Am. B. R. 479.

[65] Lea Bros. v. West, 1 Am. B. R. 261.

[66] In re Gutwillig, 1 Am. B. R. 388.

[67] In re Globe Cycle Works, 1 N. B. N. 421. (Opinion by referee.)

stayed on the ground that the plaintiffs have instituted proceedings to have the defendants declared involuntary bankrupts.[68]

A joint judgment against the bankrupt and another party does not affect the right of the plaintiff to proceed against the third party even if enjoined as against the bankrupt.[69]

§ 417. Effect of Bankruptcy Upon Assignments and Insolvency Laws.—(a) Insolvency Laws When Suspended.

The bankrupt act suspends all state insolvency laws during the continuance of its operation.[70]

An assignee under a state insolvent law where the assignment is made within four months preceding adjudication takes no title as against the creditors, and all his acts touching the estate of the bankrupt as well as all acts of the state court in the administration of the same are unauthorized and void and will be treated as nullities wherever drawn in question.[71]

The state laws are not entirely superseded by the bankruptcy act, but where there is no conflict the former remain in force.[72]

If the property of a bankrupt is in the hands of an assignee appointed by a state court the bankrupt court may, by a summary proceeding, compel the assignee to

[68] Maxwell v. Faxton, 4 N. B. R. 60.

[69] Penny v. Taylor, 10 N. B. R. 200. The stay of a suit or action in a state court is discretionary with the Bankrupt court. In re Holloway, 1 Am. B. R. 659.

[70] State insolvency courts have no jurisdiction of insolvency matters after the passage of the national bankruptcy act on July 1, 1898. Parmenter Co. v. Warren, 1 Am. B. R. 39. In re Smith, 2 Am. B. R. 9. The bankruptcy act suspends all state insolvency actions. In re Bruss-Ritter Co., 1 Am. B. R. 59.

[71] In re Smith, 2 Am. B. R. 9; in re Hathorn, Fed. Cas. No. 6214; in re Bininger, id. 1420; in re Wallace, id. 17094; in re Washington Marine Ins. Co., id. 17,246; in re Merchants' Ins. Co., id. 9,441; Thornhill v. Bank, id., 13992; Manufacturing Co. v. Hamilton (Mass.), 51 N. E. 529; in re Bruss-Ritter Co., 90 Fed. 651; Lea v. George M. West Co., 91 Fed. 237.

[72] Gerry's Appeal, 17 N. B. R. 196.

surrender the property to the trustee of the bankrupt.[73]

(b) Distinction Between Insolvent Laws and Assignment Laws.—There is a difference under a state insolvency statute and one under a state statute permitting general assignments. Proceedings under state insolvency laws are, since the passage of the bankruptcy act, void, whether or not bankruptcy proceedings follow, but general assignments are valid unless they become invalidated by subsequent bankruptcy proceedings.[74]

The difference between a general assignment law as distinguished from a state insolvency law is held by Judge Adams *in re* Sievers, 1 N. B. N., p. 68, is as follows: Under a general insolvency act there is an administration on the estate of the insolvent as a proceeding in the court, in which proceeding the estate is wound up judicially and the debtor discharged. This constitutes it essentially a bankruptcy proceeding which is superseded by the act of congress. Under a statute permitting general assignments the potency is not derived from the law, but the contract or the deed of the debtor, and is administered under and according to the provisions of the deed, supplemented only by legislative safeguards, in which proceeding the debtor is

[73] In re Fellerath, 2 Am. B. R. 40.

[74] In re Sievers, 1 Am. B. R. 117. The general bankruptcy law suspends all proceedings under state insolvent laws. In re Merchant Ins. Co., 6 N. B. R. 43. The assignment law of Illinois is substantially an insolvent law and hence is suspended by the bankrupt law from July 1, 1898. In re Curtis, 1 N. B. N. p. 163; cf. Hanchett v. Waterbury, 115 Ill., 227; Buchanan v. Smith, 83 U. S. 277; Meyer v. Hileman, 71 U. S. 329; White v. Cotzhausen, 29 U. S. 329. The general assignment law of Missouri is superseded by the bankrupt law. 1 N. B. N. 216; Davis v. Bohle, 1 N. B. N. 216. A bankrupt petitioned for the benefit of the state insolvent law after the passage of the United States bankrupt law. Held, that the state law was suspended in so far as the provisions of the bankrupt law cover the subject matter of the state insolvent law. In re Reynolds, 9 N. B. R. 50; Fed. Cas. 11,723.

not discharged. This latter method is not superseded by the act of congress.[75] The law would seem to be that insolvency laws are suspended by the bankrupt act whether bankruptcy ensues or not, whereas proceedings under general assignment laws, as in the state of Missouri or under the common law deed, are not void or voidable until bankruptcy proceedings are instituted.

A proceeding by an insolvent corporation to procure the appointment of a receiver for itself and a dissolution of the corporation and a distribution among creditors of all of its assets, is a transaction equivalent to the general assignment for the benefit of creditors within the meaning of the fourth act of bankruptcy, specified in sec. 3a, subhead 4.[76]

(c) When Assignment an Act of Bankruptcy.—The assignment of all the debtor's property for equal distribution among creditors under the law of 1867 was held not to be an act of bankruptcy unless made with intent to hinder, delay or defraud his creditors, or to defeat the operation of the bankrupt act.[77] Under the act of 1898 a general assignment for the benefit of creditors is an act of bankruptcy, whether the assignor is insolvent or not.[78]

Where two partners of an insolvent firm, with knowledge of their co-partners, institute a proceeding to procure a receivership of the partnership and a distribution of their assets according to state insolvency laws, and in such proceeding a receiver is appointed and certain creditors are entitled to a priority under the state law and to be paid in full, which preference is

[75] Mayer v. Hellman, 91 U. S. 496; Boes v. King, 108 U. S. 379; Reed v. McIntyre, 98 U. S. 507.

[76] In re Empire Metallic Bedstead Co., 1 Am. B. R. 136.

[77] Langley v. Perry, 2 N. B. R. 180.

[78] Lea v. West, 1 Am. B. R. 261; George M. West Co. v. Lea Bros., 1 N. B. N. 409; Bray v. Cobb, 1 Am. B. R. 153.

greater than that allowed by the bankrupt law, it is an act of bankruptcy.[79]

Where the liquidating partner of a firm has made a general assignment of the firm's property for the benefit of creditors within four months prior to filing the petition, to which proceedings the other partner practically acquiesced, the assignment is an act of bankruptcy.[80]

An assignment is in fraud of the bankrupt act and in law is made to hinder, delay and defraud creditors if the immediate result is to defeat the operation of the bankruptcy act and impair and defeat the remedy of creditors under that act.[81]

A general assignment is an act of bankruptcy and may be avoided by subsequent adjudication if made within four months, but until such adjudication the assignment is valid.[82]

An assignment for the benefit of creditors justifies an adjudication in bankruptcy without an averment or proof that the assignor was insolvent at the time of the assignment.[83]

Where an assignment is made within four months of an adjudication the assignee will, upon a summary petition, be required to surrender the property in his possession to a receiver appointed by a court in bankruptcy.[84]

(d) Title Derived Under State Insolvency Law.—An assignment made under a state insolvency act within four months preceding the adjudication of a bankrupt conveys no title to the assignee in the assignment as against the trustee in bankruptcy.[85]

[79] Mathe v. Coe, 1 Am. B. R. 504.

[80] Chemical Nat'l Bk. v. Meyer, 1 Am. B. R. 565.

[81] In re Gutwillig, 1 Am. B. R. 388.

[82] In re Romanow, 1 Am. B. R. 461.

[83] The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387.

[84] In re Smith, 2 Am. B. R. 9.

[85] In re Smith, 2 Am. B. R. 9.

A voluntary assignment for the benefit of creditors made pursuant to the laws of New York is voidable by the trustee of the debtor in bankruptcy if made within four months prior to the adjudication; and also because such an assignment is in effect a transfer in fraud of creditors within sec. 70 of the bankrupt act.[86]

Creditors who have received dividends under a state assignment are not precluded from participating in proceedings under the bankrupt law, and it is not necessary for them to refund the amount realized on the assignment.[87]

(e) Suit by Trustee.—An assignee must bring his action in equity for a conversion of the bankrupt's property made prior to the filing of the petition.[88]

A district court other than that in which bankruptcy proceedings are pending has no jurisdiction in an action by an assignee to recover assets.[89]

§ **418. Effect of Bankrupt Law as to Fraudulent Conveyances.**—(a) Jurisdiction—Bankrupt Court—Trustee.—Subd. b, sec. 33, of the bankrupt act, does not divest the bankrupt court of jurisdiction in suits brought by a trustee to set aside fraudulent conveyances of property belonging to the bankrupt. And the district court, as a court of bankruptcy, has ample jurisdiction to entertain a suit by a trustee, in bankruptcy, to set aside a fraudulent conveyance.[90]

(b) How Avoided.—Property conveyed by mortgage and in the hands of the mortgagee does not authorize the seizure of the property in a summary proceeding.

[86] In re Gutwillig, 1 Am. B. R. 78.

[87] In re Folb, 1 Am. B. R. 22.

[88] Mitchell v. McKibben, 8 N. B. R. 548.

[89] Lamb v. Damron, 7 N. B. R. 509.

[90] The bankruptcy act does not confine itself strictly to transfers made within four months prior to the filing of the petition. In re Grahs, 1 Am. B. R. 465; Carter v. Hobbs, 1 Am. B. R. 215. The United States courts have no jurisdiction to set aside a fraudulent conveyance where the debtor and the grantee are both residents of the same state. Burnett v. Morris Mercantile Co., 1 Am. B. R. 229.

Sec. 69 is intended to imply only to the seizures of property in possession of the bankrupt and not the property that has passed from his possession before the institution of proceedings.[91]

(c) Who May Avoid.—The assignee may file a bill to set aside a conveyance made in fraud of creditors, alleging that the deeds were without consideration and were designed to defraud creditors.[92]

A creditor cannot have a conveyance of real estate, which is either really or constructively fraudulent, set aside unless he has a lien thereon or has reduced his claim to a judgment and the fraudulent conveyance is an obstacle to a sale on execution.[93]

The trustee can avoid any conveyance which the creditors could avoid, although made more than six months before bankruptcy;[94] and he may avoid a fraudulent conveyance in a state court where it was in fraud of the bankrupt act.[95]

A trustee in bankruptcy has no greater right than a judgment creditor, and property may be conveyed as against the trustee to a *bona fide* purchaser by the fraudulent grantee where the purchaser is without notice.[96]

(d) What Is a Fraudulent Conveyance.—It is *prima facie* evidence of fraud for an insolvent debtor to make a transfer out of the usual course of business.[97]

A voluntary conveyance may be fraudulent without the grantee knowing or participating in the fraudulent intent.[98]

The removal of a debtor's goods in fulfillment of a

[91] In re Rockwood, 1 N. B. N. p. 134.
[92] Johnson v. Helmsteae, 19 N. B. R. 71.
[93] Parker v. Smith, 12 N. B. R. 474.
[94] Crabb v. Curtis, 6 N. B. R. 139.
[95] Dambmann v. White, 12 N. B. R. 438.
[96] Beall v. Harrell, 7 N. B. R. 400.
[97] Webb v. Sachs, 15 N. B. R. 168.
[98] Beecher v. Clark, 10 N. B. R. 385.

contract made long prior to bankruptcy is not fraudulent within the meaning of the bankrupt act of 1867.[99]

(e) When an Act of Bankruptcy.—The transfer of personal property by an insolvent debtor to a creditor greater in value than the amount of the debt, the difference being paid in cash to the vendor, is an act of bankruptcy, under sec. 3 of the act of 1898.[1]

(f) Power of Bankrupt Court Over.—A court of bankruptcy has power to determine whether a transfer by the bankrupt is voidable as being in fraud of creditors where the transfer was made within four months before the filing of an involuntary petition.[2]

But a trustee cannot in the district court of the United States sustain an action of replevin for goods held adversely under a claim of title where the bankrupt and the person holding the property are citizens of the same state.[3]

(g) Kinds of Fraudulent Conveyances.—Under the act of 1867 there were three kinds of fraudulent conveyances as to creditors, those void or voidable by statute, those voidable at common law, and those in fraud of the bankrupt act.[4]

(h) Rights of Creditors Vests in Assignee.—Under the former bankrupt act it was held that all the creditors' rights of action to reach fraudulently conveyed property passed to the assignee as a statutory right.[5]

(i) Rights of Creditors Under Creditor's Bill.—Where creditors by reason of their diligence in the commencement of creditors' proceedings before the filing of a petition in bankruptcy to reach property fraudulently conveyed before the passage of the act of

[99] M. & N. Nat'l Bk. v. Brady's Bend Iron Co., 5 N. B. R. 419.

[1] Johnson v. Wald, 2 Am. B. R. 84.

[2] In re Keski, 2 Am. B. R. 79.

[3] Mitchell v. McClure, 1 Am. B. R. 53.

[4] Allen v. Montgomery, 10 N. B. R. 503.

[5] Olney v. Tanner, 22 Blatchf. 540.

bankruptcy their rights are unaffected by the bankruptcy law. This is by reason of the fact that the trustee in bankruptcy takes the property as he finds it subject to existing liens.[6]

(j) Rights of Seller Under Fraudulent Purchase.—Where a creditor before bankruptcy who has rescinded his contract of sale with the debtor and began replevin proceedings wherein a portion of the goods sold to the bankrupt were recovered, he cannot prove up a claim for the residue on the ground of fraudulent conversion.[7]

(k) Title in Whom Vests.—Under sec. 5446, U. S. Rev. Stat., of the former bankrupt act, all title to the property of the debtor conveyed in fraud of creditors was vested in the assignee and it was held that the right to attack a fraudulent assignment was in the assignee in bankruptcy.[8]

Property fraudulently conveyed by the bankrupt prior to his petition, where the title subsequently vested in him before the filing of the petition, is subject to the distribution under the bankrupt act.[9]

Where a voluntary bankrupt makes a conveyance without consideration, a few days prior to the verification of his petition in bankruptcy, and does not include the real estate in his schedule, the oath is not false.[10]

§ 419. Effect of Bankruptcy Law Upon Preferences.—(a) Preferences When Valid.—The payment of a pre-existing debt within four months of bankruptcy proceedings is valid if the creditor has no reason to

[6] In re Adams, 1 Am. B. R. 94; cf. Yeatman v. Sav. Inst. 96 U. S. 764.

[7] In re Heinsfurter, 1 N. B. N. 467.

[8] In re Adams, 1 Am. B. R. 94; Cf. Olney v. Tanner, 22 Blatchf. 540; Glenny v. Langlon, 98 U. S. 20; Crimble v. Woodhead, 102 U. S. 647; Moyer v. Dewey, 103 U. S. 301.

[9] In re Brown, 1 Am. B. R. 107.

[10] Schreck, 1 Am. B. R. 366. Property which is in the hands of a receiver appointed by a state court in an action by creditors to set aside a conveyance

believe the payment is made with a view of giving him a preference or that the debtor was insolvent.[11]

A claim for reasonable attorney's fees under subd. B, sec. 64, has priority over a claim for rent.[12]

The court may allow as a preference a claim for reasonable attorney's fees for legal services actually needed for the preservation of property in voluntary proceedings pending the appointment of the trustee.[13]

Costs and expenses of bankruptcy proceedings are entitled to priority of payment out of funds in court derived from the sale of the bankrupt's property.[14]

(b) Preferences When Void.—Payments to creditors by an insolvent within four months prior to adjudication are preferences within the meaning of sec. 57g under the bankrupt act, though made without an intention to prefer and received by the creditor without reasonable cause to believe they were preferences.[15]

Where the bankrupt has conveyed personal property to a creditor in payment of an indebtedness an intent to prefer such creditor will be inferred for the reason that a preference is the natural result of such a transfer and the insolvent must be presumed to intend the natural results of his own acts.[16]

(c) When an Act of Bankruptcy.—An insolvent who allows or suffers a lien to be obtained by an attachment in proceedings begun within four months before the filing of a petition against him and does not in good faith prevent or resist the effort of the creditor to

as fraudulent, which property after it has come into the hands of a receiver is transferred back to the fraudulent grantor, vests in the trustee in bankruptcy and the receiver has no control thereof. In re Brown, 1 Am. B. R. 107.

[11] Blakey v. Boomville Nat'l Bk., 1 N. B. N. 411.

[12] In re Duncan, 1 N. B. N. 340.

[13] In re Knost, 1 N. B. N. 403.

[14] In re Whitehead, 2 N. B. R. 599; in re Beck, 1 N. B. N. 338.

[15] Johnson v. Wald, 2 Am. B. R. 84.

[16] In re Arnold, 1 N. B. N. 334.

obtain a lien, permits a preference within the meaning of the law.[17]

An insolvent debtor who does not lift a levy made on his property before the time fixed for a sale commits an act of bankruptcy.

The giving of judgment notes with power to confess judgment for borrowed money by the debtor who is insolvent and the holder of the notes enters judgment and levies upon the debtor's property, is an act of bankruptcy by reason of its being a preference by legal proceedings.[18]

(d) Preferences Secured by Legal Proceedings.—An execution against the property of the debtor may be a preference in violation of the bankrupt act.[19]

Creditors are not allowed to obtain preference by a judgment execution or a levy where they have reason to believe the debtor is insolvent.[20]

(e) Statutory Preferences.—Claims of creditors who file their statements of liens according to provision of the state law are entitled to priority from the property covered thereby as against laborers who had no liens under any state law or otherwise upon the property. The proceedings in the state court securing the liens are not affected by proceedings in bankruptcy.

(f) Right of Trustee to Recover Back.—Where an execution creditor knows his debtor to be unable to pay his debts at maturity he is chargeable with notice and must surrender what he has received in order to prove his debt.[21]

Where the property of the debtor has been sold by the creditor and the facts are such as to make the pro-

[17] In re Meyers, 1 N. B. N. 207; in re Moyer, 1 Am. B. R. 577.

[18] In re Dunkle, 7 N. B. R. 72; but see Cox v. Hale, 8 N. B. R. 562.

[19] Wilson v. Brinkman, 2 N. B. R. 149.

[20] Kerby-Dennis Co., 1 N. B. N. 399.

[21] In re Forsythe, 7 N. B. R. 174.

ceeding preferential, the assignee may recover from the creditor the value of the property.[22]

Creditors having seized under executions the personal property of an insolvent who within four months is adjudged a bankrupt, and who sell the property under execution and the proceeds remain in the sheriff's hands, and who file their claims in the bankrupt court, are to be regarded as preferred creditors by legal proceedings and must surrender the same to the trustee.[23]

(g) Judgment Creditors Not Entitled to When.—Judgment creditors under a judgment by a justice of the peace, where there is no lien until a levy is made, are not entitled to priority as against the bankrupt fund.[24]

(h) Creditors May Attack, When and Where.—Creditors who attack alleged preferences as fraudulent in state courts do not preclude themselves from attacking these preferences in a bankrupt court.[25]

(i) Landlord Entitled to Priority When.—A landlord is entitled to priority of payment over general creditors under the laws of Pennsylvania.[26]

(j) Priority in Partnership Assets.—When a man and his wife hold themselves out to the world as partners in trade and the firm becomes bankrupt, the partnership creditors are entitled to be paid in preference to individual creditors of the husband out of the partnership assets.[27]

(k) Priority Under Conditional Contract.—Where a bankrupt within four months preceding the filing of a voluntary petition in bankruptcy resells property

[22] Christman v. Haner, 8 N. B. R. 528.

[23] In re Huffman, 1 Am. B. R. 587.

[24] In re Wood, 1 N. B. N. 430.

[25] The Lediegh Carriage Co. v. Stengel, 1 N. B. N. 387.

[26] In re Goldstein, 1 N. B. N. 422. (Opinion by referee.)

[27] In re Kinkead, 7 N. B. R. 439.

which he has bought upon a contract providing that the proceeds of the sale of such property were to be understood as pledged to the seller as collateral security for the purchase price subject to the seller's orders, the seller reserving the right to take possession and dispose of the same to satisfy the purchase price, the transfer is not a preference within the meaning of the bankrupt act and is good and valid against the general creditors and the trustee.[28]

(l) Law of Distribution Changed as to Priorities.—The Supreme Court of Massachusetts has held that priorities created by the insolvent law control by analogy the distribution of assets in the hands of receivers.[29]

(m) Judgment Notes May be Preferential.—Judgment notes with power of attorney to confess judgments where the payee has reason to believe the debtor insolvent is a fraudulent preference and therefore void.[30]

(n) Taxes Entitled to Priority.—A bank owed debts to the state and also taxes levied under the laws of the state. Held, that the taxes had priority over the other claims, but that for a debt other than taxes the state had no preference over other creditors of the same class.[31]

§ 420. Insolvency as an Element in Bankruptcy.—(a) What Is.—Insolvency in the ordinary meaning of the term is where a man's debts cannot be made in full out of his property by levy and sale on execution.[32]

[28] In re Klingaman, 2 Am. B. R. 44. (Opinion by referee.)

[29] Jones v. Arena Pub. Co., 171 Mass. 22. The bankruptcy law changed the rule of distribution in Massachusetts as declared above in case of receivers. In in re Rouse, 91 Fed. Rep. 196, a claim for labor performed more than three months before the bankruptcy proceedings and entitled to priority under the insolvent laws was held not enforcible under the bankrupt law.

[30] In re Lord, 5 N. B. R. 318.

[31] In re Brand, 3 N. B. R. 85.

[32] Randall v. Sunderland, 4 N.

Under the law of 1867 insolvency as applied to traders did not mean inability to pay at some future time upon a settlement of their business, but a present inability to pay in the ordinary course of business.[33]

In determining what is ordinary and usual course of business the question is whether the transaction is according to the usual course of business of the particular person.[34]

A person's insolvency under the bankrupt act of 1867 so far as commercial paper is concerned was determined by the custom of his place of business.[35] Under that law it meant an inability to pay debts in the ordinary course of business as persons usually carry on business;[36] or was inability to pay commercial paper in the due course of business by a merchant.[37]

(b) Effect of Insolvency — Notice. — Reasonable cause to believe a debtor insolvent is where such a state of facts exists which brought to the notice of the creditor respecting the financial condition of the debtor would lead a prudent man to the conclusion that the debtor is unable to pay his obligations as they mature in the ordinary course of business.[38]

Where a creditor has notice of a state of facts which in law would constitute insolvency there is a presumption of actual knowledge conclusive until rebutted.[39]

A creditor who knows that his debtor is unable to pay his debts in the ordinary course of business has reasonable cause to believe the debtor insolvent.[40]

B. R. 4; cf. Harrison v. McLaren, 10 N. B. R. 244.

[33] Rison v. Knapp, 4 N. B. R. 144; Shaffer v. Fritchery, 4 N. B. R. 179.

[34] Randall v. Sunderland, 4 N. B. R. 4; cf. Harrison v. McLaren, 10 N. B. R. 244.

[35] Hall v. Wager, 5 N. B. R. 181.

[36] Jackson v. McCulloch, 13 N. B. R. 283; Toof v. Martin, 6 N. B. R. 49; cf. Wilson v. City Bank of St. Paul, 5 N. B. R. 270.

[37] Warren v. Tenth Nat'l Bk., 7 N. B. R. 481.

[38] Dutcher v. Wright, 16 N. B. R. 331.

[39] In re Hauck, 17 N. B. R. 158.

[40] Wilson v. Brinkman, 2 N. B. R. 149.

Creditors having accounts over due for several months on which suit has been brought for collection have reasonable cause to believe the debtor insolvent.[41]

An insolvent who undertakes to make a final distribution of his assets must do so in a court of bankruptcy when there is such a court.[42]

§ **421. Statute of Limitations in Bankruptcy.**—The scheduling of a debt barred by the statute of limitations does not revive the same.[43]

§ **422. Corporations May be Adjudged Bankrupts.**—(a) Jurisdiction of Federal Courts.—When a corporation for manufacturing purposes applies under a state law for its dissolution and asks for and has appointed a temporary receiver of its property, the federal courts are not ousted of jurisdiction to adjudge such a corporation a bankrupt.[44]

The voluntary application in a state court by a corporation for dissolution is not an act of bankruptcy.[45]

(b) Bankruptcy Does Not Discharge Directors and Stockholders.—Corporation creditors have a right to enforce the statutory liability of its directors. The secondary liability of directors and stockholders in certain

[41] Strannahan v. Gregory, 4 N. B. R. 142.

[42] In re Union Pac. R. Co., 10 N. B. R. 178. For valuable note on intent in connection with preference under the bankrupt act see Johnson v. Wald, 2 Am. B. R. 84.

[43] The question was certified to the court as to whether a debt barred by the statute of limitations of Massachusetts, where the bankrupt had resided for ten years, but not barred by the statute of limitations of Vermont, where the creditor resided and where the contracts were made, could be proved against the bankrupt, and, if not, whether the act of the bankrupt in entering the debt upon his schedule revived the same. Both questions were answered in the negative. In re Kingsley, 1 N. B. R. 66. The petitioner in involuntary bankruptcy claimed to be a creditor by reason of a claim which was barred by the statute of limitations, and that the bankrupt court was not bound by the state statute. Petition dismissed. In re Cornwell, 6 N. B. R. 305.

[44] In re Empire Metallic Bedstead Co., 1 Am. B. R. 136. (Opinion of referee.)

[45] In re Empire Metallic Bedstead Co., 1 N. B. N. 387.

cases within certain limits and for certain classes of debts is abundantly established, notwithstanding the bankruptcy and discharge of the corporation. In order to enforce this liability creditors must be permitted to obtain their judgment against the corporation as a basis of enforcing the statutory liability.[46]

Stockholders are liable in bankruptcy to the assignee for the amounts of their unpaid stock.

(c) What Corporations May Be Proceeded Against. —An insurance company is not such a corporation as can be proceeded against in involuntary bankruptcy.[47]

§ **423. Effect of Bankruptcy on Alimony.**—In England it has been held that alimony is not a debt or liability provable against the husband in bankruptcy and notwithstanding the bankruptcy of the husband he still continues liable to pay alimony.[48]

A judgment for alimony is not a provable debt and not effected by a discharge.[49] But it has been held that a judgment for alimony is a debt provable in bankruptcy and a judgment creditor may be enjoined from further prosecution thereof.[50]

Alimony is not the subject of assignment.[51]

[46] In re Marshall Paper Co., 1 N. B. N. 407. Wilbur v. Stockholders, 18 N. B. R. 178.

[47] In re Camerontown M. F. L. & W. S. Ins. Co., 1 N. B. N. 383. Whether loan and building associations are subject to the bankruptcy law see 1 N. B. N. 413.

[48] In re Robinson, L. R. 27 Chy. Div. 160; Linton v. Linton, L. R. 15 Q. B. Div. 239; Ex parte Fryer, L. R. 17 Q. B. Div. 718; Haddon v. Haddon, L. R., 18 Q. B. Div. 778; in re Otawa, 58 L. T. (N. S.) 85.

[49] In re Smith, 1 N. B. N. 471; (opinion by referee). Cf. in re Garrett, Fed. Cas. No. 5252; in re Lachemeyer, Fed. Cas. No. 7966 (under law of 1867); Noyes v. Hubbard, 64 Vt. 302.

[50] In re VanOrden, 1 N. B. N. 475.

[51] Jordon v. Westerman, 62 Mich. 170; Hackley v. Muskegon Cir. J., 58 Mich., 854; cf. Romaine v. Chauncey, 129 N. Y. 566. In this case it was held that alimony is in one sense property of the wife and is a specific fund provided for a specific purpose only, whose express limitations take it out of the general law of property, and as it is created by equity it should have the protection of equity so that it may not be perverted for a purpose not intended. Cf. article by Thomas D. Adams, in 1 N. B. N. 468.

§ 424. Exemptions Under Bankrupt Law.—(a) Title to Exempt Property Does Not Pass.—No title to exempt property passes to an assignee.[52]

(b) In Property Fraudulently Conveyed.—A debtor is entitled to a homestead in property fraudulently conveyed but set aside by the assignee.[53]

Where a bankrupt has disposed of part of his property with the intention of defrauding his creditors upon subsequently being adjudged a bankrupt he is entitled to his exemptions out of the property in the hands of the trustee. The trustee has no right to treat fraudulently concealed or disposed of property as part of the exemptions.[54]

(c) In Partnership Property.—On the bankruptcy of a partnership if there are no individual assets the partners are each entitled to an exemption from the assets.[55]

Partners are entitled to exemptions out of partnership property in North Carolina.[56]

A partner is not entitled to exemptions out of partnership property until partnership debts are paid.[57]

A partner may have his exemption out of partnership property in Georgia if his interest in the partnership assets is equal to or more than the exemption.[58]

(d) Determined by State Laws.—Where a creditor has acquired a specific lien on exempt property the bankruptcy court will not interfere in favor of the exemption claim.[59]

The exemptions which a bankrupt is entitled to are

[52] In re Hester, 5 N. B. R. 285.
[53] Bartholomew v. West, 8 N. B. R. 12; 2 Dill. 290.
[54] In re Peterson, 1 Am. B. R. 254. (Opinion of referee.) Cf. Wilcox v. Hawley, 31 N. Y. 648.
[55] In re Young, 3 N. B. R. 111; in re Rupp, 4 N. B. R. 25.
[56] In re Grimes, 1 N. B. N. 339.
[57] In re Jacobs, 1 N. B. N. 232. (Opinion by referee.)
[58] In re Camp, 1 N. B. N. 142.
[59] A debtor cannot claim two exemptions. In re Miller, 1 N. B. N. 263. (Opinion by referee.)

to be determined by the state laws as interpreted by the supreme court.[60]

(e) Must Be Claimed.—Exemptions must be claimed by the bankrupt in order to entitle him thereto.[61]

(f) When Waived in Notes.—A court of bankruptcy has jurisdiction to enforce against bankrupt's exemptions the rights of general creditors holding promissory notes or other like obligations to pay wherein there is a written waiver of homestead and exemptions authorized and prescribed by the constitution of a state.[62]

(g) Exempt Property When Sold.—Where property in the hands of a trustee is incapable of division without injury to it and of the parties in interest, it may be sold as a whole and the bankrupt's exemptions allowed out of the proceeds.[63]

(h) Termination of Homestead.—After homestead ceases or terminates the trustee may sell and reduce to money the bankrupt's interest or property in land held previously by him as a homestead exemption.[64]

§ 425. Rights of Creditors.—(a) To Require Trustee to Act.—The right of a trustee to avoid fraudulent conveyances of the debtor is imperative at the instance of creditors although the language of the act is "may."[65]

Where the trustee in bankruptcy has no funds with which to prosecute actions for fraudulent transfers of the debtor's property the bankrupt court on the basis of its equity jurisdiction may provide that the action

[60] In re Hopkins, 1 Am. B. R. 210. (Opinion by referee.) In re Camp, 1 Am. B. R. 165.
[61] In re Nunn, 1 N. B. N. 427.
[62] In re Woodruff, 1 N. B. N. 423.
[63] In re Grimes, 1 N. B. N. 426. (Opinion by referee.)
[64] In re Woodard, 1 N. B. N. 385.
[65] In re Adams, 1 Am. B. R. 94.

shall be prosecuted for the benefit of such creditors as are willing to contribute to the expense.[66]

(b) To Declare Debtor Bankrupt.—The right of creditors to have debtors declared bankrupt is not precluded by their previously having filed claims in a voluntary assignment of the same debtor.[67]

(c) To Move for a Preference.—Attaching creditors in a state court who have not filed their claims in the bankrupt court are in no position to move for a preference in favor of the attaching creditors on the proceeds of the goods impounded by them in the state court.[68]

(d) To a Sale by a Receiver.—The law is that when property is taken into the custody of the law through the instrumentality of a receiver of the property of an insolvent corporation it may be sold under the execution, previously levied, by the receiver.[69]

§ **426. What Are Assets.**—The right of action for a tort arising prior to the debtor's adjudication does not pass to the trustee.[70]

Money paid to a bankrupt by mutual mistake, after demand made on discovering the mistake, may be recovered from the trustee.[71]

A liquor license that has marketable value, upon the surrender of which a sum of money may be obtained, passes to the trustee.[72]

§ **427. Discharge of Debts.**—A petition in bankruptcy filed by a member of a firm in which part of the debts are the firm debts does not entitle the debtor to a discharge from the partnership debts without making his partner or partners parties to the proceedings.[73]

[66] In re Adams, 1 Am. B. R. 94, 105.

[67] In re Curtis, 1 N. B. N. 357.

[68] In re Ogles, 1 N. B. N. 400. (Opinion by referee.)

[69] In re Adams, 1 Am. B. R. 94; cf. Walling v. Miller, 108 N. Y. 173; Varnum v. Hart, 119 N. Y. 101.

[70] In re Hansell, 1 Am. B. R. 286.

[71] In re Collsi, 1 Am. B. R. 625.

[72] In re Fisher, 1 Am. B. R. 557.

[73] In re Freund, 1 Am. B. R. 25.

A debt which did not exist at the time of filing the bankrupt petition is not provable.[74]

Creditors who have not proven their claims have no right to oppose the discharge of a bankrupt.[75]

[74] In re Silverman, 1 N. B. N. 286.

[75] In re Levy, 1 N. B. R. 66; in re Burk, 3 N. B. R. 76; in re Borst, 11 N. B. R. 96; in re Gallison, 5 N. B. R. 353.

APPENDIX.

EXTRACTS FROM THE BANKRUPT ACT OF 1898 AFFECTING THE EQUITABLE RIGHTS AND REMEDIES OF CREDITORS.

Section **1. Definitions.**—(a) (2)—"Adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed.

(a) (4)—"Bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt.

(a) (7)—"Court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee.

(a) (8)—"Courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska.

(a) (9)—"Creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney or proxy.

(a) (10)—"Date of bankruptcy" or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed.

(a) (11)—"Debt" shall include any debt, demand or claim provable in bankruptcy.

(a) (23)—"Secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this act, or who owns such a debt for which some indorser, surety or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets.

(a) (25)—"Transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift or security.

§ **2. Courts of Bankruptcy and Powers of.**—That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory, and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original judisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdic-

tions; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bank-

rupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees;and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

§ **3. Acts of Bankruptcy.**—(a) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a gen-

eral assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b) A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

(c) It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to

establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

(e) Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

§ **4. Who May Become Bankrupts.**—(a) Any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

(b) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon de-

fault or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

§ **5. Partners.**—(a) A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(b) The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

(c) The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

(d) The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

(e) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(f) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

(g) The court may permit the proof of the claim of

the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(h) In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

§ **6. Exemptions of Bankrupts.**—(a) This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

§ **11. Suits By and Against Bankrupts.**—(a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

(b) The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A trustee may, with the approval of the court, be

permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

§ **12. Compositions, When Confirmed.**—(a) A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

(b) An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

(c) A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

(d) The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or pro-

cured except as herein provided, or by any means, promises, or acts herein forbidden.

(e) Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

§ **13. Compositions, When Set Aside.**—(a) The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

§ **14. Discharges, When Granted.**—(a) Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

(b) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

(c) The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

§ **15. Discharges, When Revoked.**—(a) The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

§ **16. Co-Debtors of Bankrupts.**—(a) The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

§ **17. Debts Not Affected by a Discharge.**—(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are judgments in action for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

§ **23. Jurisdiction of United States and State Courts.**—(a) The United States circuit courts shall have jurisdiction of all controversies at law and in

equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

(c) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act.

§ **24. Jurisdiction of Appellate Courts.**—(a) The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

(b) The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

§ 25. **Appeals and Writs of Error.**—(a) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

(b) From any final decision of a court of appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

(c) Trustees shall not be required to give bond when they take appeals or sue out writs of error.

(d) Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to

the provisions of the United States laws now in force or such as may be hereafter enacted.

§ **26. Arbitration of Controversies.** — (a) The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

(c) The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

§ **27. Compromises.** — (a) The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the state.

§ **38. Jurisdiction of Referees.**—(a) Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses, and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) per-

form such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on courts of bankruptcy and as shall be prescribed by rules or order of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

§ **44. Appointment of Trustees.**—(a) The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside, or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

§ **55. Meetings of Creditors.**—(a) The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meetings should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this act.

(d) A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

(e) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(f) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

§ **56. Voters at Meetings of Creditors.**—(a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

(b) Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of

creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

§ **57. Proof and Allowance of Claims.**—(a) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

(c) Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee, if the case has been referred.

(d) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j) Debts owing to the United States, a state, a county, a district, or a municipality, as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

(l) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a divi-

dend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation, and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: Provided, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

§ **58. Notices to Creditors.**—(a) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterward filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

(b) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the

last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

(c) All notices shall be given by the referee, unless otherwise ordered by the judge.

§ 59. **Who May File and Dismiss Petitions.**—(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

(d) If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise is shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many cred-

itors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

(f) Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

(g) A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

§ **60. Preferred Creditors.**—(a) A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

(b) If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

(c) If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in

bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty, for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor, and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

§ **63. Debts Which May Be Proved.**—(a) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract, express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

(b) Unliquidated claims against the bankrupt may,

pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

§ **64. Debts Which Have Priority.**—(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the states or the United States is entitled to priority.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at

the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

§ 65. **Declaration and Payment of Dividends.**—(a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed, equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

(c) The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a court without the United States, and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by

other creditors, before creditors who have received a dividend in such courts shall be paid any amounts.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act.

§ **66. Unclaimed Dividends.**—(a) Dividends which remain unclaimed for six months after the final dividend has been decided shall be paid by the trustee into court.

(b) Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: Provided, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

§ **67. Liens.**—(a) Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

(b) Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

(c) A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent, and that its existence and en-

forcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this act.

(e) That all conveyances, transfers, assignments or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid, shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances,

transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the state, territory or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

(f) That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: Provided, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value, who shall have acquired the same without notice or reasonable cause for inquiry.

§ **68. Set-Offs and Counterclaims.**—(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall

be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

§ **69. Possession of Property.**—(a) A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

§ **70. Title to Property.**—(a) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of

law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

(b) All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

(c) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(d) Whenever a composition shall be set aside, or discharge revoked, the trustees shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

(e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

(f) Upon the confirmation of a composition offered by a bankrupt the title to his property shall thereupon revest in him.

INDEX.

(References are to sections and pages.)

A

ABATEMENT—
death of debtor suspends suit when, § 103, p. 139.
payment of judgment abates suit, § 104, p. 138.
suit for all abates with payment of plaintiff, § 69, p. 98.
one suit not abatement of another, § 104, p. 138.
where property is foreclosed, § 104, p. 139.
ACTS FRAUDULENT—
in fact—relief, § 3, p. 8.
in law—relief, § 3, p. 8.
ACCOUNT—
assignee not compelled to when, § 8, p. 18 n.
ADEQUATE REMEDY AT LAW—
meaning of, § 50, p. 74 n.
ADMISSIONS—
of grantee when binding, § 103, p. 135 n.
ADMINISTRATOR—
may maintain suit by statute, § 85, p. 110.
when may maintain bill, § 85, p. 110.
may attack fraudulent conveyance under statute, § 16, p. 29; § 17, p. 39.
necessary party in suit on bond of intestate, § 65, p. 87.
when necessary party, § 60, p. 79.
when not necessary party, § 89, p. 116.
decree against when, § 117, p. 154.
of deceased stockholder proper party, § 63, p. 83 n.
when made parties, § 64, p. 84.
refusing to sue creditor may, §167, p. 201; § 68, p. 95.
debonis non may be plaintiff when, § 68, p. 95.
proceedings against must be for all, § 78, p. 107.
suit against by general creditor, § 167, p. 192 n.
death of not ground for creditors' bill, § 17, p. 38.
misconduct of cause for receiver, § 354, p. 312.
personal decree against seldom rendered, § 117, p. 158.
AGREEMENT—
to pay debts secured by threats not enforcible, § 186, p. 220.

ALIMONY—
equity may enforce, § 16, p. 31.
enforced in supplementary proceedings, § 211, p. 233.
not available to creditors when, § 288, p. 280.
as effected by bankruptcy, § 423, p. 391.

ALLEGATIONS OF BILL—
necessary, § 100, p. 122.
in suit to set aside foreclosure, § 103, p. 138.
to reach deceased debtors' interest in estate, § 103, p. 138.
in suit against heirs of deceased partner, § 103, p. 137.
when deed to be impeached, § 103, p. 134.
every material fact must be alleged, § 100, p. 122; § 103, p. 128.
must show judgment in force, § 100, p. 123.
must aver a judgment lien, § 42, p. 66.
must show jurisdiction in equity, § 42, p. 66.
must show relationship of parties, § 100, p. 126 n.
must show the issuing of execution to proper company, § 172, p. 209.
must be reasonably full and clear, § 103, p. 128.
not necessary to allege defendant has no other property when, § 103, p. 136.
to allege deficiency when, § 103, p. 135.
consideration of debt, § 103, p. 137.
must show issuing and return of execution, § 152, p. 172 n.
return of execution, § 100, p. 123.
date of judgment, § 184, p. 219.
when sufficient, § 102, p. 128 n.
where property concealed, § 103, p. 133.
in fraudulent conveyance, § 103, p. 130.
as to fraudulent intent, § 100, p. 124.
as to insolvency, § 65, p. 87 n.
must be made in the language of statute, § 103, p. 135.
in case of foreign debtors of debtor, § 103, p. 133.
what are required, § 103, p. 131.
required to impeach voluntary conveyance, § 100, p. 123 n.
injury to plaintiff, § 103, p. 130.
where conveyance from husband to wife, § 103, p. 136.
that plaintiff is a creditor, § 100, p. 123.
exhaustion of legal remedies shown, § 100, p. 123.
in fraudulent conveyances, § 100, p. 123.
of fraud must be certain, §100, p. 122.
participation of grantee to be shown, § 100, p. 124.
of fraud general not sufficient, § 100, p. 123.
by surety against principal, § 103, p. 136.
as to when debt contracted not required when, § 100, p. 123.
proof must correspond with, § 103, p. 136.

ALLEGATIONS OF BILL—Continued.
defective cured by evidence when, § 172, p. 211.
sufficiency not raised first on appeal, § 103, p. 137.
ALLOWANCE OF CLAIM—
right of appeal under, § 118, p. 161.
ANNUITY—
when reached by creditors, § 288, p. 279; § 285, p. 274 n.
ANSWER—
must be specific and definite, § 109, p. 141.
specific charges not answered by general allegations, § 109, p. 141.
must be consistent in all parts, § 109, p. 141.
sufficiency of.
must confess or traverse each charge, § 109, p. 141.
must answer material parts of bill, § 109, p. 141; § 113, p. 145.
insufficiency of
general allegation, § 112, p. 144; § 113, p. 145.
scope of
in matters of fraud, § 110, p. 143.
counter facts sometimes alleged, § 110, p. 142.
must be responsive to the bill, § 110, p. 142.
by several defendants, § 110, p. 142.
depends on nature of defense, § 110, p. 142.
frame of, § 109, p. 141.
usually in two parts, § 112, p. 144.
under oath
when required, § 111, p. 143.
oath may be waived, § 110, p. 141.
effect of waiver, § 110, p. 141.
preferable under oath even when waived, § 111, p. 143.
effect of as to allegations not responsive, § 111, p. 144.
if oath waived defendant cannot move to dismiss for want of equity, § 111, p. 144.
particularity required in, § 109, p. 127.
proof under, § 111, p. 143 n.
proof required where fraud alleged, § 111, p. 143.
answer when not evidence, § 111, p. 143.
depends upon facts in each case, § 111, p. 145.
reference to master, under answer, § 113, p. 145.
demand for property with reference to answer, § 113, p. 145.
defense that debtor had other property, § 113, p. 145.
want of parties raised by, § 66, p. 89.
may disclose necessary parties, § 61, p. 80.
defense to demand no defense to bill, § 113, p. 148.
irregularity in return of execution no defense, § 113, p. 148.
motives of plaintiff not material, § 113, p. 147.
matters res adjudicata under, § 113, p. 146.
exceptions to, § 113, p. 145.

ANSWER—Continued.
under bill of discovery, § 113, p. 146.
defense not available when—
defense to common law suit, § 113, p. 146.
motive of plaintiff not investigated, § 113, p. 147.
pendency of replevin suit no defense, § 113, p. 147.
pendency of appeal, § 113, p. 147.
defense of fraud when, § 113, p. 148.
answer that plaintiff assigned his interest, § 113, p. 148.
answer of no property will not prevent reference, § 113, p. 145.
insolvency proceedings a defense when, § 113, p. 145.
what defense defendant may show, § 113, p. 145.
when traversable, § 113, p. 147.

APPARENT OWNERSHIP—
ground for avoiding contract when, § 16, p. 27.

APPEALS AND WRITS OF ERROR—
general subject, § 118, p. 160.
from order appointing receiver not reversed when, § 363, p. 319.
pendency of no defense when, § 113, p. 147.
sufficiency of allegations not raised on, § 103, p. 137.
by creditors when, § 118, p. 162; § 363, p. 319.
decree not reversed where evidence conflicting, § 117, p. 157.
reversal of decree not an estoppel, § 117, p. 152.
from interlocutory order, § 118, p. 162.
who may, §118, p. 161.
appellant need not necessarily be party, § 118, p. 161.
jurisdiction of U. S. Court of Appeals, § 118, p. 160.
to Supreme Court of United States limited, § 118, p. 160.
decree not reversed when, § 117, p. 154.
reversal of decree, effect of, § 117, p. 153.

ASSIGNMENTS—
when fraudulent, § 8, p. 18; § 354, p. 313.
omission from of money or property, § 265, p. 262.
where property concealed from, § 265, p. 262.
where provision for future indebtedness, § 265, p. 263.
where preference to fictitious person, § 265, p. 263.
fraudulent—cause for receiver, § 354, p. 313.
receiver in, § 357, p. 314.
receiver in when assignment valid, § 354, p. 113.
when void, § 247, p. 253.
in anticipation of judgment, § 8, p. 18 n.
in payment of debt when void, § 8, p. 18 n.
by one partner void when, § 8, p. 18 n.
to hinder and delay creditors void, § 8, p. 19 n.

ASSIGNMENTS—Continued.
how attacked, § 308, p. 286.
may be attacked by accepting creditor, § 8, p. 19.
rules applicable as to fraudulent conveyances, § 265, p. 262.
fraudulent discontinuance of, § 323, p. 293.
effect of, § 245, p. 252.
effect on priorities, § 245, p. 257.
of on creditor to assets, § 8, p. 19 n.
assigned estate not to be used to secure assent of creditors, § 323, p. 293.
when conveyance adjudged an assignment, § 158, p. 185.
void in part may be partly assigned, § 8, p. 19 n.
if more beneficial will be upheld, § 8, p. 19 n.
effect of bankrupt law on, § 417, p. 377.
when a defense, § 113, p. 147.
no defense to bill to set aside fraudulent conveyance, § 16, p. 27.
proceedings under for all creditors, § 78, p. 107.
effect of failure to set aside, § 8, p. 18 n.
payment just before effect of, § 8, p. 18 n.
distribution before how attacked, § 8, p. 18 n.
creditor not presumed to know law of foreign state, § 8, p. 19 n.
may be attacked by general creditor, § 167, p. 194.
of mortgage when void, § 12, p. 21 n.
not affected by decree when, § 117, p. 154.
not required by debtor, § 117, p. 154.

ASSIGNEE—
for creditors may attack fraudulent conveyance, § 155, p. 178.
in bankruptcy may attack fraudulent conveyance, § 8, p. 18 n.
may file creditors' bill, § 87, p. 112.
for creditors may file creditors' bill, § 87, p. 111; § 87, p. 112.
having paid judgment may file bill, § 87, p. 112.
may be made defendants when, § 87, p. 112.
necessary party, § 62, p. 81; § 89, p. 117.
when it is sought to impeach assignment, § 65, p. 86.
defendant when, § 89, p. 115.
assignee of grantee necessary party, § 65, p. 89.
trustee in bankruptcy when, § 65, p. 88.
of vendee in fraudulent sale, § 302, p. 283; § 303, p. 283.
of chose in action, cannot maintain creditors' bill, § 17, p. 41.
of judgment, may be plaintiff, § 68, p. 95.
need not have execution and return when, § 155, p. 177.
when duty to defend, § 8, p. 19 n; § 16, p. 27.
not compelled in equity to account, § 8, p. 18 n.
insolvency of assignee cause for receiver, § 354, p. 312.

ASSIGNOR—
necessary party, § 62, p. 81; § 89, p. 115.
not necessary party, § 67, p. 91.

ASSETS—
deficiency must be shown, § 69, p. 96.
what are in bankruptcy, § 426, p. 394.
fraudulently assigned how reached, § 8, p. 19 n.
assets of insolvent corporation, form trust fund, § 2, p. 6.

ASSESSMENT—
of stockholders necessity to be shown, § 29, p. 54.
limited to deficiency of assets, § 29, p. 54.

ATTACHMENT—
as a basis of suit, § 160, p. 186.
when foundation for creditors' bill, § 167, p. 198.
basis of bill attacking fraudulent conveyance, § 161, p. 184.
attaching creditor may be plaintiff, § 68, p. 94.
creditors may join as plaintiffs when, § 69, p. 97.
may attack validity of judgment, § 8, p. 17 n.
on foreign judgment basis of creditors' bill, § 167, p. 198.
judgment in is in rem and foundation of suit, § 167, p. 260.
abatement of, creditors bill not sustained, § 17, p. 38.
suit in aid of falls when, § 167, p. 198.
effect of bankruptcy on lien of, § 414, p. 367.
receiver in, § 356, p. 314.
subject to creditors' bill lien when, § 221, p. 238.
equal distribution under when, § 70, p. 101.

APPENDIX—
bankrupt act of 1898, p. 397.

B

BANKRUPTCY.
general scope and effect of bankrupt act, § 400, p. 348.
general effect of bankrupt law and its proceedings, § 413, p. 359.
effect of
on lien by pledge, § 414, p. 368.
on landlord's lien, § 414, p. 368.
on attachment lien, § 414, p. 367.
on mortgage lien, § 414, p. 366.
on lien of creditors' bill, § 119, p. 162; § 414, p. 365.
on execution liens, § 414, p. 364.
on judgment liens, § 414, p. 361; § 414, p. 362.
on foreclosures of mortgages, § 415, p. 369.
on supplementary proceedings, § 416, p. 376.
on insolvent laws, § 417, p. 377.
on assignment laws, § 417, p. 377.

BANKRUPTCY—Continued.
on creditors generally, § 401, p. 349.
on fraudulent conveyances, § 418, p. 381.
on alimony, § 423, p. 391.
on liens generally, § 414, p. 360.
liens procured in state court void when, § 403, p. 352.
on judgment of confession, § 414, p. 363.
lien enforced in state court when, § 406, p. 353.
does not affect lien when, § 162, p. 189.
proceedings in state court void when, § 409, p. 354.
jurisdiction of state courts where assignee party, § 411, p. 357.
injunction when granted in, § 416, p. 371.
injunction against foreclosure, § 416, p. 375.
power of bankrupt court to restrain levy, § 405, p. 352.
state laws not suspended when, § 410, p. 354.
state laws when suspended, § 412, p. 358.
property in hands of receiver how procured, § 404, p. 352.
corporations may be adjudged bankrupts, § 422, p. 390.
insolvency as element in, § 420, p. 388.
exemptions under, § 424, p. 392.
statute of limitations in, § 421, p. 390.
rights of creditors under, § 425, p. 393.
assignee to be a party when, § 119, p. 163.
discharge of bankrupt, § 427, p. 394.
discharge, how set up, § 119, p. 162.
how contested, § 119, p. 163.
as a defense, § 119, p. 162.
what are assets, § 426, p. 394.
receiver in, § 386, p. 340.
assignee may attack fraudulent conveyance, § 8, p. 18 n.
assignee may file creditors' bill, § 87, p. 12.

BANKRUPTCY COURT—
jurisdiction of, § 402, p. 350.
after corporation dissolved, § 408, p. 354.
power to restrain levy, § 405, p. 352.
power of over liens, § 414, p. 368.

BASTARDY JUDGMENT—
basis of creditors' bill, § 16, p. 32.

BENEFICIAL INTEREST—
of debtor in real estate subject to creditors' bill, § 16, p. 33.

BILL OF DISCOVERY—
scope of, § 4, p. 10.

BILL—
general frame of, § 101, p. 127.
scope of, § 100, p. 122.

BILL—Continued.
in re estates of deceased debtors, § 324, p. 294.
may set aside conveyance in another county, § 324, p. 294.
nature of, § 100, p. 122.
allegations must show jurisdiction, § 42, p. 66.
must appear from face of bill, § 101, p. 127.
effect of, as lis pendens, § 108, p. 140.
impertinent matter in, § 102, p. 128.
particularity required in, § 101, p. 127.
purpose of rule requiring particularity, § 102, p. 128.
does not require technical formality as at law, § 101, p. 127.
when amended, § 103, p. 137.
allegations of bill or petition.
right of plaintiff to recover must appear, § 100, p. 127.
allegation of injury to plaintiff necessary, § 103, p. 130.
allegations of material facts, § 100, p. 122.
every material fact and circumstance, § 103, p. 128.
recovery depends on subsisting facts, § 103, p. 135.
must show jurisdiction over person or property, § 101, p. 127.
must show facts constituting jurisdiction, § 101, p. 127
must show power of court to grant relief, § 106, p. 127.
of fraud, facts constituting to be stated, § 103, p. 129.
sufficient if in language of statute, § 103, p. 135.
must allege exhaustion of legal remedy, § 103, p. 130.
not necessary to allege deficiency when, § 103, p. 135.
under Alabama statute, § 103, p. 135 n.
defective cured by evidence, § 172, p. 211.

BUILDING AND LOAN ASSOCIATIONS—
receiver appointed in, § 362, p. 319.

BURDEN OF PROOF—
in fraudulent conveyances, § 100, p. 126 n.

C

CESTUIS QUE TRUST—
when necessary parties, § 67, p. 91 n.
not necessary parties, § 67, p. 93.

CHATTEL MORTGAGE—
validity when not attacked, § 187, p. 221 n.
when void as to creditors, § 247, p. 253.
may be impeached by judgment creditor, § 8, p. 16 n.

CHOSES IN ACTION—
may be sold under decree, § 117, p. 157.
jurisdiction—equity in New Jersey, § 39, p. 61 n.

CIRCUMSTANCES—
constitute notice when, § 26, p. 50.

CITY—
not subject to creditors' bill, § 17, p. 39.
CITIZENSHIP—
effect of in creditors' suits, § 40, p. 63.
when not jurisdictional in creditors' proceedings, § 40, p. 64.
United States Courts—jurisdiction over executors and administrators, § 40, p. 63.
not involved in ancillary suit by receiver, § 40, p. 64 n.
CLAIMS AGAINST RECEIVER—
allowance of, § 375, p. 330.
when presented, § 378, p. 332.
defenses to, § 376, p. 331.
reservation of rights in presenting, § 377, p. 331.
when preferred, § 381, p. 335.
when not preferred, § 382, p. 336.
not allowed when, § 380, p. 334.
validity of, § 379, p. 333.
CLOUD UPON TITLE—
fraudulent conveyance removed as such, § 39, p. 62.
COLLUSION—
effect of, § 204, p. 227.
between officer and plaintiff invalidates return, § 172, p. 211.
who may attack judgment for, § 177, p. 216.
in rendition of judgment, what is, § 176, p. 215 n.
of third party avoids transaction, § 28, p. 52.
COLLATERALS—
subject to creditors' bill, § 16, p. 36.
COLLATERAL ATTACK—
of decree when and where, § 117, p. 154.
COMMON LAW REMEDY—
inadequacy of—equitable relief, § 3, p. 8.
CONCURRENT JURISDICTION—
law and equity
when fraudulent alienation of personalty, § 39, p. 62.
state and federal
in suit by trustee in bankruptcy, § 40, p. 64.
when barred at law barred in equity, § 39, p. 62.
proceedings against shareholders does not oust chancery, § 47, p. 71.
in matters of fraud concerning real estate, § 47, p. 70.
CONFESSION OF JUDGMENT—
sufficient, when, § 175, p. 212.
CONSIDERATION—
of debt not to be alleged in bill, § 103 p. 137.
of judgment not raised collaterally, § 103, p. 137.

CONSOLIDATION OF SUITS—
effect of, § 71, p. 101.
propriety of, § 71, p. 101.
when proper, § 72, p. 103 n.
individual bill not merged with general bill, § 73, p. 104.
effect of
rights of each depends on allegations and proof, § 71, p. 101.
saves multiplicity of suits, § 71, p. 101.

CONSTRUCTIVE FRAUD—
decree in, § 117, p. 159.

CONSTRUCTIVE NOTICE—
what is, § 100, p. 124.
not enforced in England, § 100, p. 125 n.

CONSPIRACY TO DEFRAUD—
injunction against, § 331, p. 300.

CONSTITUTION—
territory jurisdiction not applicable to creditors' bills, § 51, p. 75.

CONTEMPT OF DEBTOR—
for disobeying order, § 205, p. 228.

CONTINGENT EXPECTANCY—
right of not recoverable by creditors' bill when, § 17, p. 43.

CONVERSION—
liens on property converted preserved, § 22, p. 47.

CONVEYANCES FRAUDULENT—
relief against, § 4, p. 9.
to third person—when fraudulent, § 4, p. 9.
method of avoiding—quieting title, § 7, p. 15.
methods of avoiding—legal and equitable, § 7, p. 15.

CONVEYANCES VOLUNTARY—
when valid as to creditors, § 12, p. 21.

CO-ORDINATE JURISDICTION—
in law and equity, § 39, p. 61.
when property in hands of fraudulent grantee, § 39, p. 61.

CORPORATIONS—
creditors' bill against, § 29, p. 52.
insolvent—
proceedings against, § 4, p. 12.
scope of creditors' bills in, § 2, p. 6.
jurisdiction of U. S. court in, § 40, p. 64 n.
stockholders—
liable for fund illegally distributed, § 16, p. 31 n.

CORPORATIONS—Continued.
subscriptions to how reached, § 2, p. 7.
concurrent jurisdiction, § 47, p. 71.
cannot impeach judgment, § 176, p. 213.
when suit must be for all against, § 70, p. 99.
assessment may be made through receiver, § 29, p. 54.
assessment of stockholders limited to deficiency, § 29, p. 54.
judgment required—in proceedings against, § 155, p. 179 n.
officers of, proceedings against, § 4, p. 12.
may be adjudged bankrupts, § 422, p. 390.
dissolution jurisdiction of bankrupt court, § 408, p. 354.
receiver, grounds of, § 357, p. 315.
property of in hands of trustee, power of, § 29, p. 55.
when insolvent assets are trust fund, § 29, p. 52; § 69, p. 97.
statutory remedies against, § 29, p. 53.
conveyance to defraud creditors basis of bill, § 15, p. 26.
suit against for benefit of all creditors, § 29, p. 53; § 69, p. 97.
suit to recover statutory liability must be for all, § 69, p. 96 n.
fraudulent acts of grounds for creditors' bill, § 15, p. 26.
proof nature of, § 15, p. 26.
is a necessary party, § 63, p. 82; § 89, p. 116.
creditor may sue when, § 69, p. 98.
suit to wind up does not give priority, § 29, p. 55.

CORPORATE DEBTS—
how enforced, § 4, p. 12.

COURTS—
jurisdiction of person, § 35, p. 56.
jurisdiction subject matter, § 35, p. 56.
jurisdiction—extent of, § 36, p. 57.
jurisdiction non resident defendant, § 36, p. 58.
jurisdiction as between courts, § 43, p. 67.
creditors' bill, when maintained in Iowa, § 50, p. 74 n.
creditors' bill, jurisdiction of, § 39, p. 63.
power of to compel conveyance in foreign state, § 36, p. 59 n.

CREDITOR—
when not injured, § 6, p. 14.
rights of—
as to fraudulent conveyance, § 36, p. 58 n.
to have deed declared void when, § 16, p. 27.
to attack fraudulent conveyance of deceased debtor when, § 16, p. 29.
may elect what conveyances to attack, § 16, p. 29.
may attack fraudulent conveyance of corporation, § 15, p. 26.
may impeach conveyance where grantor engaged in hazardous business, § 16, p. 28.

CREDITOR—Continued.
may avoid fraudulent assignment, § 8, p. 18.
may impeach fraudulent sale when, § 309, p. 287.
only can impeach fraudulent transfer, § 68, p. 94.
has two modes of relief against fraudulent conveyance, § 47, p. 70.
may impeach fraudulent judgment, § 8, p. 17.
attaching may attack validity of judgment, § 8, p. 17 n.
may reach equitable fund when, § 43, p. 67.
may recover of grantee who has sold, § 16, p. 28.
right to participate in funds, § 46, p. 70.
right of against wife of deceased debtor, § 12, p. 22.
rights of when not a party, § 46, p. 70.
to collect unpaid subscriptions, § 374, p. 330.
rights under bankrupt act, § 425, p. 393.
when one may attack another, § 187, p. 220.
must have judgment, § 27, p. 51.
may sue when administrator refuses, § 167, p. 201.
may sue when corporation refuses, § 69, p. 98.
may secure priority when, § 8, p. 19.
when entitled to intervene, § 68, p. 93 n; § 81, p. 108.
when entitled to appeal, § 118, p. 161.
when may join as plaintiffs, § 69, p. 97 n.
attaching may join, § 68, p. 94.
plaintiff must be bona fide, § 68, p. 93.
effect of bankrupt act upon, § 401, p. 349.
equality of under statute, § 246, p. 252.
necessary parties in suit to enforce assignment, § 65, p. 87.
general creditor not entitled to injunction, § 27, p. 51.
who meant by order to prove debts, § 69, p. 98 n.
failure to set aside assignment, effect of, § 8, p. 18 n.
diligence secures no priority when, § 8, p. 19 n.
no presumption of knowledge of foreign laws, § 8, p. 19 n.
right to pursue property where assignee neglects, § 8, p. 19.

CREDITORS' SUITS—
kinds of, § 4, p. 8.
judgment required, § 42, p. 66.
equitable basis of, § 42, p. 67.
may remove fraudulent conveyance as cloud, § 39, p. 62.
United States court jurisdiction of, § 40, p. 63.
may be removed to U. S. court, § 40, p. 63 n.
jurisdiction not local when, § 36, p. 60 n.
to cancel fraudulent transfer, § 4, p. 9.
to cancel fraudulent incumbrance, § 4, p. 9.
to reach intangible assets, § 4, p. 11.
to reach personal property under void contract, § 15, p. 25 n.
in insolvent estates, § 4, p. 12.

CREDITORS' SUITS—Continued.
to reach equitable assets, § 4, p. 11.
property in third person relief, § 4, p. 9.
discovery, scope of, § 4, p. 10.
as to homesteads, § 6, p. 14.
in Massachusetts, § 4, p. 11 n.
under creditors' act in Michigan, § 36, p. 60 n.
property limit in N. J., § 39, p. 61.
not sustained in absence of assets, § 42, p. 67.
power of court to compel conveyance by debtor, § 36, p. 59 n.
judgment creditor who is, § 68, p. 94.
may avoid fraudulent conveyance, § 8, p. 16 n.
may reach property not liable to execution, § 39, p. 20.

CREDIT—
obtained on apparent ownership renders transaction void, § 16, p. 27.

CREDITORS' BILLS—
defined, § 2, p. 5.
scope of, § 2, p. 5.
discovery, § 4, p. 10.
may reach real and personal property, § 17, p. 46.
fraudulent conveyance
proceedings in law or equity, § 39, p. 61.
must aver lien, § 42, p. 66.
property in foreign state, § 36, p. 58 n.
property in foreign jurisdiction, § 36, p. 60 n.
fraudulent gift, § 4, p. 9.
fraudulent transfer of, § 4, p. 9.
fraudulent mortgage, § 8, p. 16.
fraudulently encumbered property, § 16, p. 28.
insolvent corporations, § 2, p. 6.
fraudulent assignment, § 8, p. 18 n; § 308, p. 286.
land purchased by wife with husband's money, § 16, p. 33.
income from life estate, § 16, p. 33.
equitable interest, § 16, p. 33.
surplus on mortgage foreclosure, § 16, p. 33.
shares of stock when, § 16, p. 31; § 16, p. 32.
insolvent estates, § 4, p. 12.
equitable assets, § 4, p. 11.
assets fraudulently assigned, § 8, p. 19 n.
property not liable to levy and sale, § 2, p. 5.
right of inventor in patent, § 16, p. 32.
against estate of surety, § 324, p. 295.
to procure settlement of estate, § 2, p. 6.
only means of reaching resulting trust, § 288, p. 279.
proceedings against heirs and devisees, § 4, p. 12.

CREDITORS' BILLS—Continued.
only remedy for voluntary conveyance, § 12, p. 23.
Jurisdiction
not local, § 36, p. 67 n.
based on property not liable to execution, § 41, p. 65.
must show judgment lien, § 42, p. 66.
based on diligence, § 41, p. 65.
based on obstruction to legal process, § 41, p. 65.
property limit in N. Y., § 37, p. 61.
jurisdiction in Michigan, § 36, p. 60 n.
allegation as to, § 103, p. 130.
in whose behalf filed, § 2, p. 5; § 69, p. 95.
may be for benefit of all similarly situated, § 25, p. 49; § 69, p. 95.
may be in behalf of others if interests common, § 69, p. 97.
must be for all creditors when, § 69, p. 95; § 75, p. 106.
when for all
Suits against trustees to reach trust fund, § 69, p. 98.
in attachment suits where statute secures equal distribution, § 70, p. 101.
to administer estate of decedent, § 70, p. 99.
in case of voluntary assignment, § 70, p. 99; § 78, p. 107.
in case of an assignment by operation of law, § 70, p. 99.
when suit to reach stock subscriptions, § 69, p. 97; § 70, p. 99.
in case of sale and bringing property into court, § 70, p. 99.
English rule, § 70, p. 100.
American rule, § 70, p. 100.
when corporate property illegally conveyed to officer, § 70, p. 99 n.
when will be treated as for all, § 77, p. 106.
when one suit for all bars another suit for all, § 73, p. 103.
filed in behalf of plaintiff, rights of other creditors, § 46, p. 70.
in proceedings against administrators must be for all, § 78, p. 107.
who may not join as plaintiffs, § 75, p. 105.
when attachment creditors may join, § 69, p. 97.
By whom filed—
by trustee of corporation, § 29, p. 55.
by receiver, § 88, p. 113.
by wife of debtor, § 88, p. 113.
by assignee for creditors, § 87, p. 112.
by purchaser when, § 88, p. 113.
by assignee of judgment, § 87, p. 111, p. 112.
by surety, § 88, p. 113.
by surety against principal, § 103, p. 136.
may be maintained by master in chancery, § 84, p. 110.
may be maintained by officer of court, § 84, p. 110.

CREDITORS' BILLS—Continued.
by administrator, § 85, p. 110.
by executor, § 85, p. 110.
by equitable holder of judgments, § 324, p. 295.
by wife against husband, § 181, p. 218.
by general creditor, § 167, p. 194.
by subsequent creditors, § 16, p. 27 n.
by assignee of judgment, § 87, p. 112.
by state, § 88, p. 114.
by whom not to be filed—
may not be filed by sheriff, § 88, p. 114.
When sustained—
to reach money due on note secured by mortgage when, § 16, p. 35.
to reach widow's dower, § 16, p. 35.
to reach equitable interest, § 16, p. 35.
to reach principal and income of trust fund, § 16, p. 35.
to reach money due on judgment for personal injury, § 16, p. 35.
to reach note pledged as collateral, § 16, p. 36.
to reach vested remainder, § 16, p. 36.
to reach property not subject to execution, § 16, p. 27.
by creditor of deceased person to set aside fraudulent sale, § 16, p. 36.
to reach individual interest of debtor in judgment, § 16, p. 36.
to recover money paid by debtor as usury, § 16, p. 36.
when fund accessible to court of equity only, § 167, p. 201.
to reach personal property under void contract, § 15, p. 25 n.
to set aside a fraudulent conveyance, § 16, p. 27.
to set aside fraudulent deed, § 16, p. 27 n.
to reach money due debtor, § 16, p. 34.
against estate of deceased joint debtor, § 89, p. 117.
to reach money placed in improvements, § 16, p. 31.
to reach separate estate of married women, § 16, p. 34.
to reach interest of partner in partnership property when, § 16, p. 34.
to reach each partner's interest under joint execution, § 16, p. 34 n.
to reach money due debtor in life insurance policy, § 16, p. 34.
to reach notes given for purchase money on sale by insolvent firm, § 16, p. 34.
to reach proceeds of property fraudulently sold, § 16, p. 35.
to reach money of debtor deposited in wife's name, § 16, p. 36.
against corporation and stockholders, § 63, p. 83 n.

CREDITORS' BILLS—Continued.
against insolvent corporation, § 29, p. 53.
against corporation to reach unpaid stock, § 155, p. 179 n.
against voluntary conveyance when, § 12, p. 20 n.
sustained even though some property liable to execution, § 51, p. 75 n.
by administrator under statute, § 17, p. 39.
to reach purchase money paid by debtor, § 23, p. 47.
sustained by partner to reach misapplied funds, § 43, p. 67.
by partnership creditors for fraudulent conveyance of partners, § 100, p. 126.
the only proceeding where debtor is dead, § 39, p. 62 n.
against executor when maintained, § 324, p. 296.
When not sustained, § 17, p. 36.
on indebtedness not in judgment, § 166, p. 192.
where administrator dies, § 17, p. 38.
by creditors to reach property purchased with money of estate, § 17, p. 36.
by mortgagee without surrender of his surety, § 16, p. 37.
by creditor who has taken deed of trust from debtor, § 17, p. 37.
to reach debt due by resident creditor of non resident debtor, § 17, p. 37.
to reach land in foreign state, § 17, p. 37.
on judgment against administrator, § 17, p. 38.
by administrator when, § 17, p. 38.
to reach patent right, § 17, p. 41.
to recover debts due debtor in foreign state, § 17, p. 43.
where not a subsisting lien, § 17, p. 38.
by individual creditor to reach trust fund for all, § 17, p. 38.
cause of action not accrued, § 15, p. 26 n.
in U. S. court on judgment in another district, § 17, p. 40.
merely to realize a better price, § 17, p. 40; § 17, p. 44.
if brought by heirs of grantor if he were dead, § 65, p. 85 n.
where estate in probate court, § 43, p. 67.
where debtor turned over property, § 42, p. 67.
not sustained when no assets, § 42, p. 67.
if attachment will lie, § 17, p. 45; § 184, p. 219.
to recover value of goods fraudulently purchased, § 311, p. 287.
to reach money due for labor under assignment, § 16, p. 34 n.
by firm creditors to reach individual interest of partners, § 16, p. 34 n.
to reach railroad bonds when, § 16, p. 33 n.
to reach trust estate when, § 16, p. 33 n.
to recover rents due or to become due, § 17, p. 41; § 17, p. 46.
to reach earnings of emancipated children, § 17, p. 45.

CREDITORS' BILLS—Continued.
on debts created by trustees, § 17, p. 45.
where equitable attachment prohibited, § 17, p. 45.
to reach verdict for personal injury before judgment, § 17, p. 45.
where deed void for uncertainty when, § 17, p. 45.
to subject goods to payment of debts, § 17, p. 44.
to reach right of action in tort when, § 17, p. 43 n.
to reach property in hands of debtor when, § 17, p. 43.
to reach contingent right in expectancy, § 17, p. 43.
to reach pension when, § 17, p. 43 n.
by supplemental bill to reach subsequently acquired property, § 17, p. 43 n.
to reach exempt property or homestead, § 17, p. 43.
against foreign corporation in hands of receiver, § 17, p. 42.
to reach trust property inalienable by will, § 17, p. 47.
to set aside fraudulent conveyance unless debtor insolvent, § 17, p. 40.
against city to reach money due contractor, § 17, p. 39.
because assignee of chose in action cannot sue, § 17, p. 41.
to reach property conveyed to wife when, § 17, p. 40.
to reach land under forfeited contract, § 17, p. 40.
to reach money due for services by debtor's assignee, § 17, p. 41.
to reach balance due on deficiency decree when, § 17, p. 41.
to reach debt falling due to debtor after discharge, § 17, p. 44.
if filed to assist debtor in defrauding other creditors, § 17, p. 44.
where remedy at law adequate, § 17, p. 44.
to reach conveyance from father to son bona fide, § 17, p. 44.
to reach promissory note given by resident partner to non resident, § 17, p. 42.
where creditor under arrest under ca. sa., § 17, p. 41.
by subsequent creditors without payment when, § 17, p. 41.
to reach debtor's distributive share in hands of administrator, § 17, p. 42.
not maintained in Iowa when, § 50, p. 74.
Allegations of plaintiff (see Bill)
necessary allegations in, § 103, p. 134.
must correspond with proof, § 103, p. 137.
reference to plaintiff as creditor not sufficient, § 103, p. 153.
sufficiency not raised on appeal, § 103, p. 137.
necessary in suit to recover property conveyed by husband to wife, § 103, p. 136.
sufficiency when property unknown or concealed, § 103, p. 133.

CREDITORS' BILLS—Continued.
sufficiency of against foreign creditors of debtor, § 103, p. 133.
as to judgments, amount, by whom, etc., § 103, p. 131.
sufficiency of in fraudulent conveyance, § 103, p. 130.
as to judgment, execution and return, § 103, p. 130 n.
not necessary to allege that defendant has no other property when, § 103, p. 136.
based on judgment, execution and return, § 155, p. 176.
when judgment not required, § 16, p. 30.
attachment as basis of, § 160, p. 186; § 167, p. 198.
assigned judgment basis of, § 168, p. 204.
equitable basis of, § 42, p. 67.
Lien of—
general, § 220, p. 234.
effect of, § 221, p. 236.
by debtor's bankruptcy, § 221, p. 236.
as to property in wife's name, § 221, p. 237.
as to rents accruing during period of redemption, § 221, p. 236 n.
effect as to other creditors, § 220, p. 234.
effect as to subsequent creditors' bill, § 221, p. 237.
does not disturb existing liens, § 25, p. 49.
prevents assignment thereafter, § 221.
as to debts due foreign corporations, § 224, p. 240.
as between joint plaintiffs, § 223, p. 240.
equitable lien on debt due non resident creditor, § 171, p. 205.
not affected by debtor's death, § 220, p. 234.
not affected by sale under subsequent creditor's bill, § 221, p. 237.
not affected by sale under execution, § 221, p. 237.
how acquired, § 25, p. 49.
dates from what time, § 224, p. 240.
superior to subsequent attachment, § 221, p. 238.
extent of, § 222, p. 238.
as to property in hands of receiver, § 222, p. 239.
as to real estate, § 221, p. 237.
On what based—
may be based on money decree, § 164, p. 190.
may be based on probate of claim, § 14, p. 26; § 180, p. 218.
may be based on bastardy judgment, § 16, p. 32.
may be based on judgment, § 15, pp. 167-221.
may be based on devastavit of executor, § 13, p. 25 n.
may be based on insolvency of executor, § 13, p. 25 n.
judgment by confession, § 175, p. 212.
a tax may be basis of, § 18, p. 46.
based on equitable element judgment not required, § 167, p. 199.
based on fraud, before assignment, § 44, p. 68 n.

CREDITORS' BILLS—Continued.
not based on lien when, § 14, p. 26.
not based on foreign judgment, § 68, p. 94.
Defense to—
no defense that debt not contracted until after conveyance, § 16, p. 27.
bankruptcy as a defense, § 119, p. 162.
payment of judgment is, § 104, p. 138.
defendants (see Parties)
who are necessary, § 89, p. 114.
daughter of fraudulent grantor protected when, § 16, p. 28 n.
Not barred—
by pendency of another suit, § 19, p. 46.
by creditor holding security, § 21, p. 46.
Preliminaries to filing bill—
inadequacy of remedy, § 202, p. 225.
all legal remedies must be exhausted, § 13, p. 25.
exhaustion of legal remedies not alone sufficient, § 44, p. 68.
resort to supp. proc. not required, § 13, p. 25.
nature of lien required as a basis of, § 157, p. 183.
personal demand need not be made on debtor, § 13, p. 25 n.
not governed by constitutional provision when, § 51, p. 75.
may call for accounting, § 324, p. 295.
recovery under depends on debtor's right when, § 24, p. 47.
right of set-off under, § 24, p. 47.
evidence required to sustain, § 26, p. 50.
declarations, § 26, p. 51.
to set aside fraudulent conveyance, § 26, p. 50.
receiver in when, § 354, p. 312 n; § 361, p. 318.
as to exempt property, § 6, p. 14.
as to homesteads, § 6, p. 14.
who may participate in, § 76, p. 106.
preference over relations, § 10, p. 20.
property not subject to execution, § 4, p. 12 n.
property in third person, relief, § 4, p. 9.
purpose of may be double, § 16, p. 27.
purchaser under protected against fraudulent grantee, § 16, p. 28 n.
proof of claim binds party, § 79, p. 107.
power of court to compel conveyance, § 36, p. 59 n.
control of by plaintiff, § 107, p. 140.
rights of creditors against corporate officers, § 4, p. 12.

CROSS-PETITION—
affirmative relief obtained thereby, § 115, p. 149.

CROSS-BILL—
by legatee when, § 115, p. 149.
necessity of when, § 115, p. 149.

CROSS BILL—Continued.
affirmative relief obtained thereby, § 115, p. 149.
judgment may be attacked thereby, § 115, p. 149.

D

DEATH OF DEBTOR—
effect of as to remedies, § 322, p. 292.

DEBTOR AND CREDITOR—
when relation exists between surety and principal, § 103, p. 136.

DEBTOR—
not enjoined in absence of judgment, § 165, p. 190.

DEBTS CORPORATE—
how enforced, § 4, p. 12.

DECREE—
general nature of, § 117, p. 150.
scope of, § 117, p. 150.
validity of, § 117, p. 153.
Attack of—
when void attacked anywhere, § 117, p. 154.
collateral attack when, § 117, p. 154.
how made, § 72, p. 102 n.
decree in another suit must be attacked by independent bill, § 72, p. 102 n.
may be corrected on motion when, §117, p. 153.
must be obeyed though erroneous, § 117, p. 154.
ineffective when, § 117, p. 154.
sometimes rendered on terms, § 117, p. 156; § 117, p. 159.
rights of all parties adjusted under, § 117, p. 155.
may not be in alternative when, § 117, p. 157.
money decree is basis of equitable proceeding, § 164, p. 190.
how assailed by other creditors, § 177, p. 215.
effect of as an abatement of suits, § 104, p. 138.
when may be personal, § 117, p. 152.
in personam when granted, § 36, p. 59 n.
personal against those participating in fraud, § 117, p. 156.
limited to person of defendant, § 36, p. 57.
in personam may affect property in foreign jurisdiction, § 17, p. 38.
personal not rendered against vendee not in possession, § 16, p. 28.
not personal against administrator, § 117, p. 158.

DECREE—Continued.
reversal does not estop plaintiff from other remedy, § 16, p. 29.
when reversed not an estoppel, § 117, p. 152.
not reversed on appeal if conflict, § 117, p. 157.
may direct sale of equitable rights, etc., § 117, p. 157.
from what property plaintiff satisfied, § 117, p. 157.
may direct payments out of note taken by grantor, § 117, p. 157.
need not in terms provide for payment of plaintiff's judgment, § 117, p. 158.
may be for several judgments when, § 117, p. 158.
against non resident when, § 36, p. 58.
territorial extent of, § 36, p. 57.
jurisdiction limited to state, § 36, p 57.
jurisdiction to compel conveyance, § 36, p. 58 n.
based on verdict of jury, § 117, p. 158.
on jury finding based on chancellor's judgment, § 117, p. 159.
must settle liens and priorities, § 117, p. 155.
may charge lands with plaintiff's judgment, § 117, p. 153.
where conveyance only constructively fraudulent, § 117, p. 159.
property converted to money liens preserved, § 22, p. 47.
law enforced as to land, § 117, p. 153.
in case of fraudulent conveyance, § 117, p. 151.
should cancel fraudulent deed, § 117, p. 157.
may order satisfaction of trust deed, § 117, p. 153.
if bill for all it is error to decree for plaintiff only, § 117, p. 160.
amount for which rendered, § 117, p. 158.
when conclusive as to amounts, § 117, p. 153.
amount of when bill filed for plaintiff alone, § 117, p. 160.
who may participate under, § 68, p. 93 n.
must provide for bringing in of all parties, § 117, p. 159.
distribution does not bind parties not in court, § 70, p. 100.
does not affect those not parties to suit, § 65, p. 89.
final not rendered in absence of necessary parties, § 61, p. 79.
not rendered in absence of necessary parties, § 61, p. 80.
based on plaintiff's judgment only, § 117, p. 153.
must conform to case made by bill, § 117, p. 150.
must be warranted by pleadings, § 117, p. 151.
must conform to facts shown, § 117, p. 150.
on sufficient evidence effect of, § 117, p. 153.
must conform to the relief demanded, § 117, p. 150.
relief not confined to prayer, § 117, p. 150.
when bar to another decree, § 73, p. 103.
effect of misdescription, § 117, p. 154.
sufficiency of in description, § 117, p. 153.
for interest basis of, § 117, p. 152.
assignment by debtor not required, § 117, p. 154.
against administrator, § 117, p. 154.

DECREE—Continued.
should set aside homestead when, § 117, p. 155.
where grantee has encumbered property, § 117, p. 151.
may follow property into hands of grantee, § 117, p. 151.
effect of as to grantee, § 117, p. 151.
must confirm sale, § 117, p. 158.
for damages improper, § 117, p. 159.

DECLARATIONS—
of assignor not evidence, § 26, p. 51 n.
when evidence, § 26, p. 51.

DEED VOID—
reached by creditors' bill, § 16, p. 27 n.

DEFENSE—
if not set up in plea or answer waived, § 113, p. 148.
no defense that plaintiff might have made judgment when, § 170, p. 205 n.
ownership of property a defense when, § 155, p. 178 n.

DEFICIENCY DECREE—
not subject to creditors' bill when, § 17, p. 42.

DEFENDANTS—
who may be, § 74, p. 104; § 89, p. 114.
who are necessary, § 89, p. 114.
judgment debtor must be, § 60, p. 79.
participants in fraud must be, § 60, p. 79.
person in possession when, § 89, p. 115.
who may be joined, § 74, p. 104.
all joint judgment debtors should be parties, § 64, p. 83.
maker and indorser of notes, § 89, p. 115.

DEMAND—
of officer under execution, § 172, p. 208.
to satisfy judgment not a prerequisite to creditors' bill, § 13, p. 25 n.

DEMURRER—
defects must appear on face of bill, § 114, p. 148.
want of parties raised by, § 66, p. 89.
what facts are admitted thereby, § 114, p. 148.
what defense is raised by, § 114, p. 148.
effect of overruling, § 114, p. 149.

DEPOSITS—
in insolvent bank recoverable, § 314, p. 289.

DEVASTAVIT—
by executor ground for creditors' bill, § 13, p. 25 n.

DILIGENT CREDITOR—
secures no priority when, § 8, p. 19 n; § 25, p. 49.
rewarded, § 235, p. 243.

DISCOVERY—
when may be had, § 324, p. 295.
distinguished from creditors' bill, § 4, p. 10.
under old chancery practice, § 205, p. 228.
seldom resorted to now, § 116, p. 146.
confined to no property, § 4, p. 10.
under Ky. civ. code, § 439, § 13, p. 24.

DISCHARGE IN INSOLVENCY—
releases from creditors' bill debt falling due subsequently, § 17, p. 44.

IN BANKRUPTCY, § 427, p. 394.

DISCRETION OF COURT—
meaning of, § 206, p. 229.

DISCONTINUANCE—
when fraudulent, effect of, § 245, p. 252.

DISTRIBUTION—
of receivership funds, § 387, p. 344.
of assets policy of equity, § 85, p. 50.
of proceeds between creditors, § 117, p. 155.
when creditors share pro rata, § 117, p. 156.
depends on establishment of claims, § 117, p. 156.
of funds belonging to a class—decree, § 117, p. 159.

DISTRIBUTEES—
not necessary parties when, § 67, p. 93.
parties not before court not affected by, § 70, p. 100.
when required to refund, § 70, p. 100.

DISTRIBUTIVE SHARE—
in estate not subject to creditors' bill, § 17, p. 42.

DOWER INTEREST—
subject to creditor's bill, § 16, p. 35.

E

EFFECT OF CONSOLIDATION—
leaves rights of parties as before, § 71, p. 101.

EJECTMENT—
inadequacy in fraudulent conveyance, § 48, p. 71.
Fraudulent Conveyance—
proceedings in Penn., § 39, p. 62 n.
removal of cloud on title in lieu of, § 39, p. 62.

EMANCIPATED CHILDREN—
earnings of not subject to creditors' bill against father, § 17, p. 45.

ENCUMBRANCE, FRAUDULENT. (See Mortgages.)—
creditors may avoid, § 8, p. 16.

EQUITABLE POWERS—
General Nature of—
relief, grounds of, § 44, p. 68.
will adjust all conflicting rights and interests, § 22, p. 47.
adjusts the rights of all parties, § 89, p. 115.
will not take jurisdiction when, § 43, p. 67.
will declare void voluntary conveyances, § 12, p. 21.
co-ordinates jurisdiction of, § 39, p. 61.
ancillary to judgment, when, § 25, p. 49.
province as to impediments, § 11, p. 20.
removal of obstructions to legal process, § 25, p. 49.
where legal remedies enlarged equitable remedies are, § 25, p. 49.
cannot extend legal rights, § 49, p. 73.
policy of to distribute ratably, § 25, p. 50.
requires good faith in all cases, § 28, p. 52.
interposes not by reason of lien, § 25, p. 49.
power of over equitable assets, § 25, p. 48.
will distribute assets of corporation after dissolution, § 29, p. 55.
power of to assess stockholders, § 29, p. 54.
power of court to compel conveyance, § 36, p. 59 n.
injunction to restrain suits within and without the State, § 36, p. 59 n.
defense made at law will bar in equity, § 39, p. 62.
will not sustain bill to secure better price, § 17, p. 40.
may reach equitable interest, § 16, p. 33.
Equity of Redemption——
may be reached in equity, § 16, p. 33.
no defense that legal remedy not exhausted, § 13, p. 25 n.
Equity—
may reach estate of non-resident partner, § 67, p. 92 n.

EQUITY JURISDICTION, GENERAL—
scope of, § 49, p. 72.
jurisdiction, bases of, § 44, p. 68 n.
jurisdiction, advantages of, § 48, p. 71.
to aid courts at law, § 49, p. 73.
based on exhaustion of legal remedies, § 50, p. 73; § 44, p. 68.
based on inadequacy of common law remedies, § 41, p. 65.
debt must be clear and undisputed, § 44, p. 68 n.
Jurisdiction, Particular Grounds—
jurisdiction against stockholders, § 47, p. 71.

EQUITY JURISDICTION—Continued.
to reach shares of stock, § 16, p. 31.
to reach and apply salary of officer, § 16, p. 31.
to appropriate land to payment of alimony, § 16, p. 31.
to reach money put in improvements, § 16, p. 31.
to reach partnership funds misapplied, § 43, p. 67.
to reach property purchased and no title, § 48, p. 72.
in fraudulent conveyances, § 7, p. 15; § 38, p. 61; § 49, p. 72.
in case of fraud, § 45, p. 68.
to restore property obtained by fraud, § 45, p. 69.
to prevent fraud, § 45, p. 69.
none in case of trusts, when, § 45, p. 69.
in trust fund, § 36, p. 57 n; § 45, p. 68.
in partition, § 46, p. 57 n.
to reach property not liable to execution, § 48, p. 72.
choses in action in N. J. § 37, p. 61 n.
to remove fraudulent judgments, § 49, p. 72.
to divest title to land, § 36, p. 57 n.
title to land in another county, § 36, p. 57 n.
of estates in probate, § 290, p. 281.
as to suits beyond the State, § 36, p. 60 n.
of property in foreign states, § 291, p. 281.
to remove fraudulent conveyance as cloud, § 39, p. 62.
jurisdiction for one purpose may be for all, § 46, p. 69.
is based on equality, § 46, p. 69.
in case of mali fides of defendant, § 36, p. 59 n.
to restrain suits by residents and non-residents, § 36, p. 59 n.
Equitable Remedies Sustained—
based on fraud of debtor, § 157, p. 184.
against non-resident assignor, § 167, p. 194.
death of debtor suspends existing remedies, § 322, p. 292.
to remove cloud upon title, § 321, p. 291.
to set aside deed as fraudulent in another county, § 324, p. 294.
no legal remedy against dead insolvent's estate, § 167, p. 193.
maintained against distributees' estate, § 324, p. 295.
in rescission of contract, § 306, p. 286.
where fraudulent contract not rescinded, § 304, p. 284.
over legacy, § 321, p. 290.
not denied where judgment cannot be obtained, § 167, p. 192.
where debtor procures title in name of another, § 157, p. 183.
not blended with legal remedy in U. S. court, § 152, p. 174.
not based on supplemental bill, § 166, p. 191.
where fund accessible to court of equity only, § 167, p. 201.
to reach fraudulent judgment, § 49, p. 73.
based on probate of claim, § 14, p. 26.
as to homestead, § 6, p. 14.

EQUITY JURISDICTION—Continued.
Equitable Remedies Not Sustained—
none where assets in hands of executor and legatees, when, § 324, p. 295.
based on expired lien not sustained, § 162, p. 188.
does not extend to general creditor, § 163, p. 189.
none to recover damages for fraudulent purchase, § 311, p. 287.
not sustained to enforce agreement secured by threats, § 186, p. 220.
possession of insolvent's estate places in custodia legis, § 221, p. 237.
not based on lien, when, § 14, p. 26.
Equitable Relief—
nature of, § 172, p. 206 n.
grounds of generally, § 156, p. 181.
based on lien of plaintiff on property of debtor, § 156, p. 181.
property not subject to legal process, § 3, p. 8.
placing property beyond legal process, § 3, p. 8.
in case of insolvent corporations, § 2, p. 6.
concealment of property, § 3, p. 8.
may be exhaustion of legal remedy, § 156, p. 182.
as judgment, execution and return nulla bona, § 156, p. 182.
based on property of defendant not subject to execution, § 156, p. 182.
based on fraudulent obstruction, § 156, p. 181.
based on lien does not require return of execution, § 156, p. 182.
may be lien of plaintiff, § 156, p. 182.
discovery, § 4, p. 10.
Basis of Jurisdiction—
grounds of, § 3, p. 7.
intervention of fraud, § 3, p. 7.
relief depends on equitable nature of action, § 3, p. 7.
does not depend on exhaustion of legal remedies, § 3, p. 7.
ground of inadequacy of common law, § 3, p. 81.
immateriality as to form of action, § 3, p. 7.
is not ancillary, § 3, p. 7.

EQUITABLE ASSETS—
power of court over, § 25, p. 48.
not subject to levy at common law, § 25, p. 48.

EQUITABLE LEVY—
what is, § 25, p. 49; § 354, p. 312 n.

EQUITABLE RIGHTS—
may be sold under decree, § 117, p. 157.

EQUITABLE ESTATE—
only reached after execution and return, § 167, p. 196 n.
enlargement of by statute, § 25, p. 49.
EQUITABLE EXECUTION—
what is, § 49, p. 73; § 171, p. 206.
EQUITABLE ASSETS—
defined, § 25, p. 50.
how reached, § 4, p. 11.
how reached by creditors' bill, § 25, p. 49.
applied in equity, § 25, p. 49.
when trust fund, § 25, p. 50.
not subject to payment of debts, when, § 25, p. 50.
EQUITABLE FUND—
how reached, § 43, p. 67.
EQUITABLE ATTACHMENTS—
plaintiffs may not join, § 75, p. 105.
EQUITABLE INTEREST—
cannot be seized on execution, § 16, p. 33.
subject to creditors' bill, § 16, p. 35.
whether can be reached, how determined, § 48 n.
EQUITABLE LIEN—
how obtained, § 171, p. 205.
ESTOPPEL—
effect of as to judgment, § 176, p. 214.
when defendant estopped to show property liable, § 113, p. 145.
reversal of decree not, § 117, p. 152.
of receiver by acts of creditors, § 210, p. 232.
of debtor estops codefendants, § 40, p. 64 n.
creditor proving claim estopped when, § 240, p. 249.
ESTATES OF DECEDENTS—
scope of bill in, § 324, p. 294.
jurisdiction of equity in, § 290, p. 281; § 320, p. 290.
settlement of by creditors' bills, § 2, p. 6.
when taken from administrator, § 16, p. 29.
misconduct of administrator cause for receiver, § 354, p. 312.
claim against sufficient basis of creditors' proceeding, § 180, p. 218.
when cannot be reached in equity, § 321, p. 291.
real estate of deceased debtor may be reached by creditor, § 321, p. 291.
proof of debt is foundation for bill, § 167, p. 193 n.
effect of death of debtor, § 322, p. 292.
ESTATE OF LUNATIC—
no preference in, § 324, p. 295.
ESTATES IN FEE—
restrictions on, § 286, p. 275.

ESTATES INSOLVENT—
proceedings against, § 4, p. 12.

EVIDENCE REQUIRED—
under creditors' bill, § 26, p. 50.
in case of fraudulent conveyance, § 103, p. 134.
to set aside voluntary conveyance, § 12, p. 20 n.
declarations of grantor not sufficient, § 100, p. 125 n.
declaration of assignor not, § 26, p. 51 n.
declarations of vendor not evidence, § 26, p. 51.

EXAMINATION OF DEBTOR—
in discretion of court, § 286, p. 229.
scope of § 206, p. 229.
contempt for disobeying order, § 205, p. 228.
power of commissioner, § 206, p. 229.
when made, § 205, p. 228.
supplemental proceedings, § 205, p. 227.
of debtor's wife, § 205, p. 228.

EXCEPTION TO ANSWER—
nature of, § 113, p. 145.

EXECUTION—
must be shown to have issued, § 42, p. 66.
must issue to proper county, § 168, p. 203; § 172, p. 209 n.
issuance of may be waived, § 169, p. 204.
need not issue after assignment of judgment, § 168, p. 204.
duty of officer to hold, § 172, p. 208.
officer must make demand, § 113, p. 145; § 172, p. 208.
allegation must show return nulla bona, § 100, p. 123.
allegations of issuance and return, § 103, p. 131.
must be bona fide efforts to make, § 172, p. 210.
cannot be levied on equitable interest, § 16, p. 33.
when presumed to be regular, § 103, p. 135 n.
cannot issue against administrator, § 167, p. 193; § 173, p. 211.
levy of when not required, § 103, p. 132.
must issue within one year, § 42, p. 66.
Required—
to reach personal property by creditors' bill, § 153, p. 175.
to reach equitable assets, § 155, p. 177.
to reach personal property, § 156, p. 182.
Not required when, § 170, p. 205 n.
when statute creates lien on lands of decedents, § 167, p. 197.
in case of insolvent corporation, when, § 167, p. 197.
where debtor has no property except what has been conveyed in fraud, § 167, p. 196.
not required if useless proceeding, § 167, p. 195.
where estate not subject to judgment at law, § 167, p. 202.
where judgment and execution are impossible, § 167, p. 202.

EXECUTION—Continued.
return nulla bona when debtor is dead, § 14, p. 26.
of assignee of judgment, when, § 155, p. 177.
Return of—
when made, § 172, p. 206.
not required, when, § 154, p. 175.
must run full statutory period, § 172, p. 206.
within statutory period, § 172, p. 207.
when to be made—contrary rule, § 204, p. 227.
bona fide return at any time gives jurisdiction, § 172, p. 208.
must show exhaustion of legal remedies, § 172, p. 208.
by order of plaintiff's atty., § 172, p. 209.
ordered by plaintiff not sufficient, § 205, p. 227.
by sheriff on own responsibility, § 172, p. 208.
imports verity, § 172, p. 211.
must be before bill filed, § 172, p. 210.
required where proceeding based on equity powers, § 154, p. 176.
irregular may be amended, § 172, p. 210.
under supplemental proceedings, general rule, § 203, p. 226.
under Ky. Civ. Code, Sec. 439, § 13, p. 24 n.
rule in Iowa, § 167, p. 195 n.

EXECUTION LIEN—
effect of bankruptcy on, § 414, p. 364.

EXECUTOR—
when may maintain bill, § 85, p. 110.
when made party, § 64, p. 84.
when necessary party, § 60, p. 79.
duty to impeach fraudulent sale, § 309, p. 287.
judgment against not ground for creditors' bill, § 17, p. 45.
proceedings against must be for all, § 78, p. 107.
insolvency of ground for creditors' bill, § 13, p. 25.

EXEMPT PROPERTY—
not subject to creditors' bill, § 17, p. 43.
under bankrupt act, § 424, p. 392.
conveyance of not fraudulent, § 6, p. 13.

EXISTING CREDITORS—
voluntary conveyance when void as to, § 12, p. 22.

EXPENSES OF RECEIVER—
when allowed, § 383, p. 338.

EXHAUSTION OF LEGAL REMEDY—
meaning of term, § 13, p. 24; § 50, p. 74; § 202, p. 225.
foundation of law of remedy of creditors, § 50, p. 73.
prerequisite to creditors' bill, § 150, p. 169.
allegations must show, § 100, p. 123.
bill based on exhaustion of legal remedies, § 50, p. 74.

EXHAUSTION OF LEGAL REMEDY—Continued.
must be before creditors' proceedings sustained, § 183, p. 219 n.
in supplemental proceedings, § 202, p. 225.
required in United States courts, § 152, p. 173.
What is Exhaustion—
judgment, execution and return nulla bona, § 156, p. 182.
how established, § 170, p. 204.
sheriff's return prima facie evidence of, § 172, p. 208.
established by return of execution unsatisfied, § 152, p. 174 n; § 170, p. 204.
must be shown by return of execution, § 172, p. 208.
probate of claim sufficient, when, § 14, p. 26.
must be honest effort to make judgment, § 170, p. 205.
must be complete, § 161, p. 187.
What is not Exhaustion—
judgment against two out three not, § 13, p. 25 n.
not shown without execution to proper county, § 168, p. 203.
not shown by expired lien, § 162, p. 188.
execution against personalty only not sufficient, § 161, p. 187.
where lien of judgment limited, § 50, p. 74 n.
judgment must be lien on realty, when, § 161, p. 187.
equity of redemption in debtor no defense, § 13, p. 25 n.
inadequacy rather than exhaustion, § 14, p. 26.
does not confer jurisdiction, when, § 44, p. 68.
partial remedy at law does not bar equity, § 50, p. 74.
garnishment, effect of, § 13, p. 24.
What Is Not Required—
resort to supplemental proceedings not required, § 13, p. 25.
criminal proceedings not required, § 13, p. 24.
judgment not required when debtor dead, § 14, p. 26.
creditor not required to go into other jurisdictions, § 13, p. 24.
complete exhaustion when not required, § 13, p. 24.
debtor alone can make defense, § 13, p. 25.
mortgagee cannot make defense, § 13, p. 25.
defense must be made in opportune time, § 13, p. 25.
waiver by Mo. Rev. Stat. 1889, § 571; § 13, p. 25 n.
under Ky. Civ. Code, § 439 n.
has no application in matters of concurrent jurisdiction, § 50, p. 73.

F

FICTITIOUS CLAIMS—
renders assignment void, § 8, p. 18.
FICTITIOUS DEBTS—
evidence of fraud, § 8, p. 18 n.
FOREIGN JUDGMENT—
not basis of creditor's bill, § 68, p. 94.

FOREIGN JURISDICTION—
power of receiver to sue in, § 369, p. 325.
FOREIGN CREDITORS—
priority over, § 241, p. 249.
FOREIGN CORPORATION—
receiver of may be appointed, § 352, p. 310.
in hands of receiver not subject to creditors' bill, § 17, p. 42.
lien on property by creditors' bill, § 222, p. 240.
FORECLOSURE—
suit to set aside necessary allegations, § 103, p. 138.
when operates as abatement of suit, § 104, p. 139.
injunction against when, § 416, p. 375.
effect of bankrupt act on, § 415, p. 369.
FRAUD—
Fraudulent acts.
in fact—relief, § 3, p. 8.
in law—relief, § 3, p. 8.
ground for creditors' bill, § 15, p. 26.
how pleaded, § 102, p. 128.
facts constituting must be alleged, § 100, p. 123 n.
general allegation of not sufficient, § 100, p. 123.
is a conclusion of law, § 100, p. 124 n.
inferred from facts, § 113, p. 148.
not presumed, § 103, p. 129.
when apparent on face of deed, § 103, p. 129.
form of immaterial, § 9, p. 19.
as defense not available when, § 113, p. 148.
proof of in equity and at law, § 48, p. 71 n.
positive denial of when not avoidable, § 111, p. 143.
upon creditors, proceedings by ejectment as remedy, § 39, p. 62 n.
ground of jurisdiction of United States courts, § 40, p. 63 n.
vitiates discontinuance of assignment, § 245, p. 252.
though charged—judgment required, § 182, p. 218.
FRAUD, ACCIDENT AND MISTAKE—
relief against judgments for, § 8, p. 17 n.
FRAUDULENT INTENT—
what is, § 4, p. 9.
notice to vendee, § 26, p. 50.
allegation of, when sufficient, § 100, p. 124.
FRAUDULENT REPRESENTATIONS—
relief against, § 45, p. 69.
necessary to recision, § 307, p. 286.
concealment of material facts, § 307, p. 286.
FRAUDULENT GIFT—
what is, § 4, p. 9.

FRAUDULENT GRANTOR—
necessary party, when, § 89, p. 115.
FRAUDULENT GRANTEE—
necessary party, § 89, p. 115.
when particeps criminis, § 9, p. 20.
FRAUDULENT VENDEE—
liability of, § 312, p. 288.
of personalty, § 302, p. 283.
FRAUDULENT PURCHASE—
jurisdiction in, § 313, p. 288.
on strength of ownership, void, § 12, p. 23.
fraud in purchase of goods not basis of equitable jurisdiction, § 183, p. 219 n.
liability of purchaser, § 309, p. 286.
FRAUDULENT SALES—
jurisdiction of equity in, § 45, p. 69.
right of vendor to rescind, § 303, p. 283-4.
rescision.
must be in reasonable time, § 306, p. 285.
rescision of conditions, § 304, p. 285.
rescinded contract not resulting trust, § 310, p. 287.
sale not rescinded, remedy in, § 304, p. 284.
when not subject to rescission, § 304, p. 284.
assignment, how attacked, § 308, p. 286.
general assignment by vendee, § 303, p. 283.
fraudulent vendee, liability of, § 312, p. 288.
vendee not in possession not liable, § 16, p. 28.
fraud of vendee, § 302, p. 283.
burden of proof on purchaser from fraudulent vendee, § 312, p. 288.
representations that are fraudulent, § 307, p. 286.
of personalty, § 300, p. 282.
when executor refuses to impeach, § 309, p. 287.
United States Court,—jurisdiction in case of, § 40, p. 63 n.
FRAUDULENT TRANSFER—
what is, § 4, p. 9.
relief against, § 4, p. 9.
jurisdiction of equity in, § 45, p. 69.
jurisdiction concurrent in law and equity, § 39, p. 62.
personal property, remedy in, § 4, p. 9.
must injure creditor, § 6, p. 14.
form of, immaterial, § 9, p. 19.
may be by valid judgment lawfully enforced, § 9, p. 20.
receiver in, grounds for, § 358, p. 315.
cancellation of fraudulent transfer, § 4, p. 9.
declarations of assignor not evidence, § 26, p. 57 n.

FRAUDULENT TRANSFER—Continued.
upheld to extent of actual consideration, when, § 16, p. 31.
taking title in third person, § 4, p. 9.
of stock, § 301, p. 283.

FRAUDULENT ASSIGNMENT—
reached by creditor's bill, § 8, p. 18 n.
when upheld, § 8, p. 19 n.
void as to creditors, when, § 8, p. 18.
for benefit of creditors, § 308, p. 286.
may be attacked by accepting creditor, § 8, p. 19.
if made in view of judgment, void, § 8, p. 18 n.
in payment of debt, when void, § 8, p. 18 n.
by one partner, when void, § 8, p. 18 n.
attack of by general creditor, § 167, p. 194.
discontinuance of, § 323, p. 293.
who may attack, § 8, p. 19 n.

FRAUDULENT JUDGMENT—
what is, § 4, p. 9.
void as to creditors, § 8, p. 17.
how impeached, § 8, p. 17 n.
remedy against, § 8, p. 18 n.
relief in equity against, § 8, p. 17 n.
when not vacated in equity, § 8, p. 18 n.
decree against, scope of, § 8, p. 17 n.
attacked by attaching creditor, § 8, p. 17 n.
set aside only to extent of plaintiff's claim, § 8, p. 18 n.
on debt not due void, when, § 8, p. 18 n.
may be attacked in garnishment proceedings, when, § 49, p. 73.
in relation to statute of limitations, § 8, p. 17 n.
not ground for injunction, § 27, p. 51.

FRAUDULENT ENCUMBRANCE—
what is, § 4, p. 9.
creditor's bill may remove, § 16, p. 28 n.
bill to cancel fraudulent encumbrance, § 4, p. 9.
jurisdiction when land in another county, § 51, p. 75.
colorable only, is void, § 8, p. 16.
validity, how attacked, § 8, p. 17 n.
impeached by judgment creditor, § 8, p. 16 n.

FRAUDULENT CONVEYANCE—
what is, § 4, p. 9; § 418, p. 382.
kinds of, § 7, p. 15.
must injure creditor, § 6, p. 14.
relief against, § 4, p. 9; § 39, p. 62.
jurisdiction of U. S. Court in, § 407, p. 353.
Equity,—
jurisdiction in, § 12, p. 21 n; § 45, p. 69; § 47, p. 70.

FRAUDULENT CONVEYANCE—Continued.
advantage of equitable method, § 7, p. 15.
creditors may proceed in equity when, § 39, p. 62.
equity not barred by statutory jurisdiction, § 37, p. 61 n.
may reach fraudulent encumbrance in another county, § 51, p. 75.
equity will apply property to payment of plaintiff, § 22, p. 47.
creditors' bill the only proceeding where debtor dead, § 39, p. 62 n.
co-ordinate jurisdiction in law and equity, § 39, p. 61.
where property in hands of grantee, § 39, p. 61.
attacked at law or in equity, § 153, p. 175.
creditors have two modes of relief, § 47, p. 70.
legal relief against, § 39, p. 62; § 47, p. 70.
legal method, sale and ejectment, § 7, p. 15.
inadequacy of law as a remedy, § 48, p. 7.
remedy prior to Statute 13 Eliz., § 5, p. 12; § 5, p. 13.
form of, not material, § 9, p. 19; § 9, p. 20.
attachment basis of attacking, § 161, p. 187.
may be attacked on judgment for tort, § 184, p. 219.
judgment need not be prior to, § 179, p. 217.
relief against in foreign jurisdiction, § 36, p. 58 n.
jurisdiction as to property in another State, § 36, p. 60 n.
jurisdiction, residence of grantor and grantee, § 38, p. 61.
Who may attack.
by assignee of judgment, § 87, p. 111.
or assignee of several judgments, § 87, p. 111.
of deceased debtor, who may attack, § 16, p. 29; § 16, p. 36.
generally, who may attack, § 8, p. 16; § 16, p. 29; § 68, p. 94.
firm creditors, § 100, p. 126.
by principal, relief against by surety, § 103, p. 136.
may be attacked by assignee, § 155, p. 178.
creditor may attack when assignee neglects, § 8, p. 19 n.
creditor may attack when administrator refuses, § 16, p. 29; § 68, p. 95.
may be attacked by State as creditor, § 88, p. 114.
not set aside by those who would be heirs when, § 65, p. 85 n.
administrator may not attack, § 17, p. 39.
subsequent creditors cannot set aside without compensation when, § 17, p. 41.
not attacked by general creditor, § 163, p. 189 n.
Kinds of.
conveyance to third person, § 8, p. 15; § 8, p. 16.
voluntary conveyance, § 8, p. 16.
probate of claim sufficient ground to attack, § 14, p. 26.
by corporation, ground for creditors' bill, § 15, p. 26.

FRAUDULENT CONVEYANCE—Continued.
Necessary averments.
that plaintiff had lien, § 42, p. 66; § 100, p. 123; § 103, p. 134.
when sufficient, § 100, p. 124 n.
not necessary to allege defendant has no other property when, § 103, p. 136.
general allegation of fraud, when sufficient, § 103, p. 129.
Judgment required.
in suit to set aside fraudulent conveyance, § 153, p. 175.
need not be a lien when conveyance made, § 242, p. 250.
fraudulent recital in deed not obstruction, § 155, p. 178.
to wife void when, § 8, p. 16 n.
land purchased by wife with husband's money reached, § 16, p. 33.
from husband to wife element of fraud, § 12, p. 22.
to wife not subject to creditors' bill when, § 17, p. 40.
from husband to wife valid in Ga., § 12, p. 23 n.
from parent to son, § 10, p. 20.
from father to son in good faith sustained, § 17, p. 44.
Evidence to set aside.
evidence required to set aside, § 26, p. 50.
proved by preponderance of evidence, § 103, p. 134.
parol evidence may establish fraud, § 103, p. 129.
burden of proof in, § 100, p. 126.
declarations of vendor will not impeach, § 26, p. 51.
declarations of grantor not sufficient, § 100, p. 125 n.
evidence required to set aside, § 17, p. 40.
depends on existing circumstances, § 100, p. 126.
purpose of where not material, § 6, p. 13.
grantor and grantee necessary parties, § 62, p. 81.
upheld to extent of consideration paid when, § 16, p. 31.
what must appear in addition to exhaustion of legal remedies, § 44, p. 68.
taking title in third person, § 4, p. 9.
void as to subsequent creditors when, § 16, p. 27 n.
property in hands of innocent purchaser not reached, § 16, p. 28.
attacked on bill to quit title, § 7, p. 15.
cloud on title, how removed, § 39, p. 62; § 39, p. 63.
not necessary that precise property remains in grantee, § 16, p. 28.
effect of insolvency, § 100, p. 126 n.
subsequent insolvency of grantor not sufficient, § 100, p. 126 n.
grantee not heard on question of priority, § 117, p. 152.
conveyance of homestead not, § 6, p. 14.
conveyance of exempt property not, § 6, p. 13.
sale by grantee no defense, § 16, p. 28.

FRAUDULENT CONVEYANCE—Continued.
death of grantee no defense, § 12, p. 23.
assignment for creditors not a defense, § 16, p. 27.
effect of bankrupt act on, § 418, p. 381.
before bankruptcy, how reached, § 8, p. 18 n.
debtor not permitted to say what conveyance shall be attacked, § 16, p. 29.
creditor need not attack all, § 16, p. 29.
two or more may be defendants, § 89, p. 115.
Receiver in.
grounds of, § 358, p. 315.
in supplementary proceedings receiver attacks, § 201, p. 224.
suit by, receiver must be special, § 202, p. 225.
power of receiver in, § 365, p. 320.
under Wis. Rev. Stat. § 3835, § 12, p. 24.
proceedings in Pennsylvania at law when, § 39, p. 62 n.
property in third person, proceedings in Wisconsin, § 202, p. 225.
decree in scope of, § 117, p. 151.
may be against proceeds of sale, § 16, p. 28.
decree may direct payment out note of grantor, § 117, p. 157.
personal decree against grantee, § 117, p. 152.

FUTURE PROFITS—
when assigned, § 8, p. 18 n.

G

GARNISHMENT—
when have effect of creditors' bill, § 49, p. 73.
against executor or administrator, § 167, p. 199.
right of not part of legal remedies when, § 13, p. 24.

GENERAL CREDITORS—
have no standing in equity, § 152, p. 172 n; §163, p. 189; § 203, p. 226.
statutory rights of, § 29, p. 53.
are sometimes given right of action by statute, § 167, p. 202.
may file bill under statute, § 167, p. 194.
when may maintain bill, § 167, p. 192 n.
effect of joining with judgment creditor, § 159, p. 186.
not concerned in debtor's frauds, § 183, p. 219.
cannot attack validity of judgment, § 178, p. 216.
may set aside an assignment when, § 167, p. 194.
cannot attack assignment, § 187, p. 221 n.
not entitled to file bill, § 42, p. 66.
right to have conveyance adjudged an assignment, § 158, p. 185.
may sustain assignment, § 155, p. 179.
before judgment, not entitled to action for waste, § 165, p. 191.

GENERAL CREDITORS—Continued.
before judgment, not entitled to accounting for rents, § 165, p. 191.
not entitled to injunction against debtor, § 165, p. 190; § 330, p. 297.
no right to injunction, § 330, p. 299 n.
rights of in Alabama, § 163, p. 189.
cannot participate under decree when, § 68, p. 93 n.

GIFT—FRAUDULENT—
what is, § 4, p. 9.

GOOD FAITH—
required by equity in all cases, § 28, p. 52.

GOOD WILL—
not subject to creditor's bill, § 17, p. 44.

GRANTOR FRAUDULENT—
necessary party when, § 89, p. 115.
when not necessary, § 62, p. 81.

GRANTEE—
when necessary party, § 60, p. 79.
property in hands of followed, § 117, p. 151.
when liable for value of property, § 117, p. 152.
when liable to personal decree, § 117, p. 152.
liable if property exchanged for other property, § 16, p. 28.
chargeable with proceeds of property sold, § 16, p. 28.
fraudulent cannot take assignment of mortgage and defeat purchaser, § 16, p. 28 n.
fraudulent, plaintiff's priority over, § 117, p. 158.
no interest in question of priority, § 117, p. 152; § 243, p. 251.
several may be defendants, § 62, p. 82.
two or more fraudulent grantees joined, § 74, p. 104.
notice of fraud not to be shown when, § 100, p. 124.
not required to act on mere suspicion, § 100, p. 125 n.
participation of in fraud to be shown, § 100, p. 124.
character of evidence against, § 103, p. 134.
admissions by not estoppel when, § 103, p. 135.
of corporation takes cum onere when, § 15, p. 26.
with notice takes subject to rights of creditors, § 15, p. 26.
priority in dealing with when, § 248, p. 253.
fraudulent, equity knows no favorite, § 16, p. 29.
sale by, no defense, § 16, p. 28.
free from fraud, subsequent creditors must pay for improvements, § 17, p. 41.

GUARDIAN—
cannot sue in his own name, § 86, p. 111.

H

HAZARDOUS BUSINESS—
renders conveyance void when, § 16, p. 27.
HEIRS—
when necessary parties, § 60, p. 79.
proceedings against, § 4, p. 12.
suit against, when maintained, § 324, p. 294.
when suit against, voluntary conveyance, § 12, p. 23.
cannot impeach conveyance of ancestor, § 68, p. 94.
necessary allegations against, § 103, p. 138.
HINDERING, DELAYING AND DEFRAUDING CREDITORS—
three methods
voluntary conveyances, § 8, p. 16.
conveyance to another, § 8, p. 15.
taking title in another, § 8, p. 16.
HOMESTEAD—
not subject to creditor's bill, § 17, p. 43.
not a subject of fraudulent conveyance, § 6, p. 14.
decree should order set off, § 117, p. 155.
affect of waiver between creditors, § 117, p. 155.
abandonment of, § 6, p. 14.
HUSBAND AND WIFE—
wife may sustain bill against husband, § 181, p. 218.
necessary allegation in voluntary conveyance, § 103, p. 136.
money of husband deposited in wife's name subject to, § 16, p. 36.
not a competent witness, when, § 208, p. 230.
property conveyed to wife not subject, when, § 17, p. 40.
when void from husband to wife, § 12, p. 22.
conveyance to wife fraudulent, when, § 8, p. 16.

I

INADEQUACY—
common law remedies, meaning of, § 41, p. 65.
INCOME—
from life estate subject to creditors' bill, § 16, p. 33.
INCUMBRANCE. (See mortgages.)
assumed by wife, extent of protection, § 12, p. 22.
paid off by grantee must be repaid, when, § 17, p. 41.
IMPROVEMENTS—
made by wife on husband's property protected, § 12, p. 22.
must be paid for, when, § 17, p. 41.
INJUNCTION—
when granted.
against removal of property, § 330, p. 298.
against disposition of choses in action, § 330, p. 298.
where action is brought to rescind sale for fraud, § 330, p. 299.
in attachment, when proper, § 167, p. 198.

INJUNCTION—Continued.
against a conspiracy to defraud, § 331, p. 300.
against foreign assignment, when, § 332, p. 202.
to prevent tying up funds of receiver, § 332. p. 303.
after winding up order of corporation, § 332, p. 303.
against foreclosures, when, § 416, p. 375.
where court has jurisdiction of the parties, when, § 332, p. 303.
in case of fraudulent judgments, § 330, p. 299 n.
power of court to enjoin transfers, § 207, p. 230.
against creditors, § 332, p. 301.
to restrain attachment in foreign state, § 332, p. 303.
creditor may be enjoined from prosecuting suit in foreign jurisdiction, § 332, p. 301.
to restrain suit by resident in foreign state, § 36, p. 59 n.
against suit in foreign state to evade exemption laws, § 332, p. 304.
against suit in foreign state on claims barred by limitations, § 332, p. 303.
may affect property in foreign jurisdiction, when, § 17, p. 38.
When not granted—
right to does not exist before judgment, § 207, p. 230.
not granted except on judgment, § 165, p. 190.
not granted on application of general creditor, § 165, p. 190; § 165, p. 191.
against debtor on application of general creditor rarely granted, § 330, p. 297.
not granted under bill not verified, § 105, p. 139.
to restrain foreclosure in foreign state, § 332, p. 303.
to enjoin a foreign suit, when, § 332, p. 301.
against debtor's alienation of property rarely granted, § 330, p. 297.
against transfer of property not granted, when, § 165, p. 191.
not granted by reason of fraudulent conveyances, § 330, p. 298.
creditor proving claim against estate may be enjoined, when, § 332, p. 303.
In bankruptcy proceedings, § 416, p. 371.
bankrupt court may restrain levy, § 405, p. 352.
against supplementary proceedings, § 416, p. 376.
against judgment in bankruptcy proceedings, § 416, p. 373.
in bankruptcy against proceedings in state courts, § 416, p. 373.
commissioner no power to restrain, § 206, p. 229.
effect of as to lien of creditors' bill, § 221, p. 236 n.

INSANE PERSON—
guardian of cannot sue in own name, § 86, p. 111.

INSANITY OF DEBTOR—
not ground for failure to obtain judgment, § 69, p. 96.

INSOLVENCY—
in voluntary conveyances, § 100, p. 124.
not an excuse for not obtaining judgment, § 152, p. 174 n.
of surviving partner, allegations of, § 103, p. 138.
of executor ground for creditors' bill, § 13, p. 25 n.
as element in bankruptcy, § 420, p. 388.
discharge renders debts falling due subsequently not subject, § 17, p. 44.
allegation of not sufficient, § 65, p. 87.
presumed from facts and circumstances, § 103, p. 136.
necessary to show, when, § 103, p. 136.

INSOLVENT ESTATES—
proceedings against, § 4, p. 12.
suit against by general creditor, § 167, p. 192.

INSOLVENT LAWS—
effect of bankrupt law upon, § 417, p. 377.

INSOLVENT DEBTOR—
excuse for not obtaining judgment, § 167, p. 194 n; § 167, p. 195.
insolvency of debtor no ground for injunction, § 330, p. 300.

INSOLVENT BANK—
deposits in recoverable, § 314, p. 289.

INSOLVENT CORPORATIONS—
proceedings against, § 4, p. 12.
relief against in equity, § 2, p. 6.
creditors' bills in case of, § 2, p. 6.
relief against trust fund, § 2, p. 6.
assets are trust fund, § 29, p. 52.
subscriptions to, how reached, § 2, p. 7.

INNOCENT PURCHASER—
not liable for purchase of fraudulent grantee, § 16, p. 28.

INSOLVENT ASSIGNEE—
cause for receiver, § 354, p. 312.

INSOLVENCY OF STOCKHOLDER—
excuse for not making party, § 29, p. 54.

INSOLVENCY PROCEEDINGS—
defense to suit, when, § 113, p. 147.

INTENT FRAUDULENT—
what is, § 4, p. 9.
meaning of, § 100, p. 124.
allegations of, when sufficient, § 100, p. 124.

INTERVENTION—
when creditors may intervene, § 81, p. 108.
plaintiff in one bill may attack decree in another, but not by intervention, § 72, p. 102 n.
INTEREST—
decree for basis of, § 117, p. 152.
IRREGULARITY OF JUDGMENT—
not assailed by other creditors, § 177, p. 215.

J

JOINDER OF PARTIES—
defendants who may be, § 74, p. 104.
JOINDER OF SUITS—
when not, § 75, p. 105 n.
general creditor not joined with judgment creditor, § 159, p. 186.
JOINT TENANTS—
order of proceedings against and surety, § 185, p. 220.
JUDGMENT—
When Required General—
as a basis of jurisdiction, § 150, p. 169, p. 170.
reason for general rule, § 151, p. 171; p. 172; § 158, p. 184; p. 185.
is basis of recovery, § 159, p. 186.
in order to exhaust legal remedy, § 158, p. 184.
essential to establish plaintiff's claim, § 158, p. 184.
creditor's suit is ancillary, § 158, p. 184.
When Required Special—
in U. S. Courts though waived by statute, § 167, p. 195.
necessary as a basis of creditors' bill, § 42, p. 66.
creditor must have to file bill against corporation, § 29, p. 55.
on bill by wife against husband, § 181, p. 218.
though actual fraud charged, § 182, p. 218.
to reach fraudulent conveyance, § 150, p. 169; § 153, p. 175.
by surety to set aside fraudulent conveyance of principal, § 155, p. 181.
to reach equitable assets, § 155, p. 177.
to reach equitable estate, § 150, p. 169.
though corporation has surrendered charter, § 155, p. 179.
in proceedings against stockholders, § 155, p. 178.
a basis for injunction, § 165, p. 190.
to administer assets of insolvent firm, § 155, p. 181.
to set aside an assignment as fraudulent, § 155, p. 178.
to reach partnership property, § 155, p. 178.
to reach money due debtor, § 155, p. 180.

JUDGMENT—Continued.
to attack fraudulent judgment, § 155, p. 180.
to reach stock of goods fraudulently sold, § 155, p. 180.
to obtain relief against fraud, § 155, p. 180.
except where statute otherwise provides, § 150, p. 170 n; § 158, p. 185.
not an excuse that debtor might put property out of hands, § 167, p. 201.
not excused by insolvency of debtor, § 152, p. 174 n.
failure to obtain may be waived, § 167, p. 197.
required under Mass. Gen. St. Ch. 113, § 16, p. 32 n.
When Not Required—
not required exception, § 167, p. 192.
where property not subject to attachment, § 167, p. 200.
where property held in trust for creditors, § 167, p. 197.
where plaintiff's claim is based on equitable element, § 167, p. 199.
where corporation is insolvent and in hands of receiver, § 167, p. 202.
where fund sought is trust fund, § 167, p. 197.
where debtor is dead, § 14, p. 26; § 167, p. 192.
where impossible to obtain, § 167, p. 192.
where debtor is non-resident, § 167, p. 200.
where debtor absconds or conceals himself, § 167, p. 200.
to uphold an assignment, § 155, p. 179.
in suit by administrator, when, § 69, p. 95.
rule in U. S. Court and N. Y., § 167, p. 194.
not required when (Indiana), § 69, p. 97 n.
rule in Alabama, § 167, p. 196 n.
not required where administrator refuses to sue, § 167, p. 201.
not required where adminstrator refuses to act, § 16, p. 30.
Sufficiency of Judgment—
rule in U. S. courts, § 152, p. 172.
practice not affected by state statutes, § 152, p. 172.
in Federal court basis for proceedings under statute, § 178, p. 217.
in Federal court basis for proceeding in State court, § 178, p. 216.
of Federal court when treated as domestic, § 178, p. 217.
in State court basis for creditors' bill in U. S. court, § 178, p. 216.
proof of debt against estate foundation for bill, § 167, p. 193.
claim against estate if allowed sufficient, § 180, p. 218.
against executor discharged not ground for creditors' bill, § 17, p. 45.

JUDGMENT—Continued.
against administrator not basis of creditors' bill, § 17, p. 38.
decree in chancery is as basis of creditors' bill, § 164, p. 190.
of justice of the peace basis of creditors' bill, § 178, p. 216 n.
before J. P. not sufficient, § 178, p. 217.
against principal not basis for proceeding against surety, § 178, p. 217.
acquired subsequent to filing of bill by confession no jurisdiction, § 166, p. 191.
need not be of same court, § 178, p. 217.
judgment against two out of three not sufficient, § 13, p. 25 n.
assigned may be basis of creditors' bill, § 87, p. 112.
against as assignee does not bind personally, § 80, p. 107.
satisfaction of a defense to suit, § 103, p. 132.
need not be lien when conveyance made, § 242, p. 250.
lien must be existing lien, § 162, p. 188.
need not be such that immediate levy made, § 172, p. 211.
based on tort is basis of creditors' proceeding, § 184, p. 219.
nature of, § 157, p. 183.
conclusive against stockholders, when, § 176, p. 213.
not questioned by stockholders, when, § 176, p. 214.
amount due on judgment not material, § 20, p. 46.
Lien of Judgment—
when expires, § 162, p. 188 n.
not affected by bankruptcy, when, § 162, p. 189.
on land in name of debtor's wife, § 162, p. 188 n.
need not antedate act complained of, § 179, p. 217.
payment of abates suit, § 103, p. 138.
allegations must show, § 100, p. 123.
necessary to attack another judgment creditor, § 27, p. 51.
only attacked by judgment creditors, § 177, p. 216.
may be attacked by cross bill, § 115, p. 149.
irregularity in rendition, § 176, p. 213.
amount due on judgment not material, § 20, p. 46.
upon judgment effect of, § 174, p. 212.
not merged in judgment in another State, § 174, p. 212.
Judgment by Confession—
by confession if valid sufficient, § 175, p. 212.
when void as preferential, § 268, p. 265.
when debt not due void, § 8, p. 18 n.
before assignment valid when, § 8, p. 18 n.
not set aside when, § 8, p. 18 n.
Fraudulent Judgment—
what is, § 4, p. 9.
void as to creditors, § 8, p. 17.
relief against, § 8, p. 17 n; § 8, p. 18 n.

JUDGMENT—Continued.
fraudulent if debt not due, § 8, p. 18 n.
liability of purchaser under, § 117, p. 157.
valid and lawfully enforced may operate as fraud, § 9, p. 20.
debtor precluded from setting up fraud in, § 176, p. 213 n.
How Attacked—
only attacked on ground of collusion, § 176, p. 214 n.
impeached for collusion and fraud, § 176, p. 215.
not collaterally attacked, § 176, p. 213 n.
not conclusive where there is collusion, § 176, p. 213.
By Whom Attacked—
not conclusive as to other creditors, § 177, p. 215.
must be bona fide as to other creditors, § 177, p. 215.
how assailed by other creditors, § 177, p. 215.
one creditor may attack judgment of another, § 187, p. 221 n.
prima facie against grantee, § 176, p. 213.
satisfied relief against, § 8, p. 18 n.
evidence of exhaustion of legal remedies, § 42, p. 67.
when restrained, § 8, p. 17 n.

JUDGMENT CREDITOR—
only entitled to file bill, § 42, p. 66.
plaintiff must be, § 68, p. 93.
only can attack validity of another judgment, § 177, p. 216.
may avoid fraudulent conveyance, § 8, p. 16 n.
may proceed in law or equity, § 39, p. 62.
cannot join with general creditor, § 159, p. 186.
must be such at time of decree, § 68, p. 93 n.
judgment creditor in tort may file bill, § 68, p. 93 n.
judgment in another State not sufficient, § 68, p. 94.
entitled to reach equity of redemption, § 16, p. 33.
right of action against corporation, § 29, p. 53.
may reach mortgage fraudulently assigned, § 12, p. 21 n.
may reach property not liable to execution, § 9, p. 20.
may impeach chattel mortgage, § 8, p. 16 n.
rights of as to property of debtor in third person, § 11, p. 23.

JUDGMENT DEBTOR—
death of suspends suit, when, § 104, p. 139.
necessary party, § 89, p. 114.
when may be omitted as parties, § 64, p. 84.

JUDGMENT LIEN—
required in creditors' bill, § 42, p. 66.
effect of bankrupt act upon, § 414, p. 361.
not basis of equitable jurisdiction, § 25, p. 49.
as a basis of creditors' bill in Iowa, § 50, p. 74 n.

JUDGMENT AND EXECUTION—
lien of, § 4, p. 11 n.
when not admitted must be proved, § 103, p. 132.
operate on legal rights only, § 4, p. 11 n.

JUDICIAL PREFERENCE—
effect of, § 25, p. 50.

JURY—
verdict of as basis of decree, § 117, p. 158.

JURY TRIAL—
under creditors' bills, § 158, p. 185.

JURISDICTION—
jurisdiction in equity.
defined, § 35, p. 56.
statutory source of, § 37, p. 60.
equitable basis of, § 42, p. 67; § 44, p. 68.
scope of, § 49, p. 72.
advantages of, § 48, p. 71.
United States Courts—
have, except where citizenship prevents, § 40, p. 63.
citizenship when not involved, § 40, p. 64.
amount determined how as to jurisdiction, § 40, p. 64 n.
over administrators and executors, § 40, p. 63 n.
after dissolution of corporation, § 408, p. 354.
of Federal court based on judgment, § 152, p. 172 n.
to attack fraudulent conveyance, § 407, p. 353.
over fraud in State court, § 40, p. 63 n.
obtained by assignment of judgments to one, § 40, p. 64 n.
in matters of estates when, § 40, p. 63 n.
in administration of insolvent corporation estate, § 40, p. 64 n.
not defeated by statutory remedy at law, § 40, p. 64.
where receiver brings suit, § 40, p. 64.
ancillary suit by receiver, § 40, p. 64 n.
not ousted by admitting new parties plaintiff, § 40, p. 64 n.
removal of creditors' bill to, § 40, p. 63 n.
Statutory Jurisdiction—
sometimes limited, § 37, p. 61 n.
property limit in N. Y., § 37, p. 61 n.
in N. J., § 37, p. 61 n.
to reach property of debtor in Mass., § 37, p. 61.
statute source of general, § 39, p. 63.
equity not excluded by statute, § 37, p. 61 n.
conflict of, § 36, p. 60 n.
co-ordinate in law and equity, § 39, p. 61.
concurrent does not oust chancery in proceedings against stockholders, § 47, p. 71.

JURISDICTION—Continued.
courts of law and equity have concurrent jurisdiction, when, § 153, p. 175.
concurrent in conveyance of real estate, § 47, p. 70.
in suit by trustee in bankruptcy, § 40, p. 64 n.
as between courts, § 43, p. 67.
bar at law is bar in equity, § 39, p. 62.
defense at law will bar in equity, § 39, p. 62.
whether in law or equity how and when raised, § 39, p. 62 n.
of bankrupt court, § 402, p. 35 n.
of State courts in bankruptcy matters, § 411, p. 357.
probate court not exclusive, when, § 16, p. 29.
equity over estate in probate, § 290, p. 281.
Jurisdiction as to Subject Matter—
generally, § 35, p. 56.
basis of under creditors' bill, § 41, p. 65.
equity basis of debt must be clear, § 44, p. 68.
depends on some injury shown, § 44, p. 68.
does not depend on difficulty of enforcing decree, § 36, p. 59 n.
of res. binding on owner when, § 36, p. 58.
must be alleged, § 42, p. 66.
objection to not raised on appeal, when, § 39, p. 62 n.
not conferred by supplemental bill, § 166, p. 191.
equity jurisdiction of the subject matter of fraud, § 3, p. 7; § 45, p. 68.
fraud in obtaining title, § 36, p. 59 n.
fraud before assignment, § 44, p. 68 n.
to restore property obtained by fraud, § 45, p. 67.
to prevent fraud, § 45, p. 69.
of trusts, § 36, p. 60 n; § 44, p. 68.
trust funds, § 36, p. 57 n.
to reach fund illegally distributed to stockholders, § 16, p. 31 n.
to reach shares of stock, when, § 16, p. 31.
to reach salary of officer, § 16, p. 31.
where fund reached only in equity, § 167, p. 201.
in case of fraudulent purchase, § 313, p. 288.
in estates, § 320, p. 290.
to reach fraudulent mortgage in another county, § 51, p. 75.
to distribute assets of corporation, when, § 29, p. 55.
as to fraudulent alienation of personalty, § 39, p. 62.
to reach money placed in improvements, § 16, p. 31.
equity to reach partnership funds misapplied, § 43, p. 67.
in re waste by tenant in common, § 36, p. 59 n.
as to property not subject to execution, § 37, p. 61; § 41, p. 65.
may remove fraudulent conveyance as cloud on title, § 39, p. 62.
to apply property in payment of alimony, § 16, p. 31.

JURISDICTION—Continued.
equity to divest title, § 36, p. 57 n.
equity partition in foreign state, § 36, p. 57 n.
limited to real and personal property, where, § 36, p. 57 n.
Territorial Jurisdiction—
territorial, § 36, p. 57.
property in foreign jurisdiction, § 36, p. 58 n.
estate of non-resident partner, § 67, p. 92 n.
of property in foreign state, § 291, p. 281.
over non-resident, when, § 36, p. 58.
territorial, extent of, § 36, p. 57.
over person of defendant may affect property in foreign jurisdiction, § 17, p. 37 n.
over property in foreign state when debtor a resident, § 17, p. 37 n.
injunction to restrain suit in foreign state, § 36, p. 59 n.
jurisdiction to restrain residents and non-residents, § 36, p. 59 n.
equity as to property beyond state, § 36, p. 60 n.
fraudulent conveyance in foreign state, § 36, p. 58.
confined to land in county, § 36, p. 57 n.
as to land where jurisdiction of person, § 36, p. 57 n.
Jurisdiction as to the Person—
of person, § 35, p. 56.
of parties gives jurisdiction as to subject matter, § 36, p. 60 n.
personal in its nature, when, § 38, p. 61.
of person, how enforced, § 36, p. 58.
equity what must appear to give, § 39, p. 63.
decree in pursuance, when, § 36, p. 59 n.
Jurisdictional Prerequisites—
inadequacy of common law, § 3, p. 8; § 41, p. 65.
judgment required, § 42, p. 66.
exhaustion of legal remedies, § 50, p. 73; § 172, p. 208.
use of common law process as formality does not give, § 41, p. 65.
exhaustion of legal remedies not sufficient, § 44, p. 68.
what must appear in addition to exhaustion of legal remedies, § 44, p. 68.
creditors' bill based on obstruction to legal process, § 41, p. 65.
return of execution jurisdictional, § 172, p. 209.
lien must be shown at time of filing bill, § 42, p. 66.
equity not sustained when, § 43, p. 67.
refused if favoritism shown, § 172, p. 208.
refused where oppression results, § 172, p. 208.
Jurisdictional Incidents—
death of administrator not basis of creditors' bill, § 17, p. 39.

JURISDICTION—Continued.
amount when not a defense, § 40, p. 64 n
estoppel of debtor estops codefendants, § 40, p. 64 n.
equity takes for all, when, § 46, p. 69.
equity adjusts the rights of all parties, § 89, p. 115.
decree limited to person and property, § 36, p. 57.
equity where legal title involved, § 36, p. 59 n.
creditors' proceeding, effect of change of residence, § 36, p. 60 n.
fraudulent conveyance, residence of parties, § 38, p. 61.
creditors' bill, not local, § 36, p. 60 n.
real estate, local, § 36, p. 60 n.
mala fides of defendant gives, § 36, p. 59 n.
under decree on insufficient evidence, § 117, p. 153.
over property and parties, § 384, p. 339.
equity where bill in behalf of plaintiff only, § 46, p. 80.
fraudulent conveyance removed as cloud on title, when, § 39, p. 62.

JUS DISPONENDI—
applied to trust property, § 284, p. 272.
in relation to rights of creditors, § 10, p. 20.
limited by public policy, § 8, p. 16.

K

KNOWLEDGE OF CIRCUMSTANCES—
constitutes notice, § 26, p. 50.

L

LACHES—
as a defense, § 121, p. 164.
reason for rule, § 121, p. 164 n.
may be taken advantage of by demurrer, § 121, p. 164.
should be set up in answer, § 121, p. 164.
impediments to suit must be alleged, § 121, p. 166.
reasons for delay must be alleged, § 121, p. 164.
not necessary to be pleaded, when, § 121, p. 165 n.
not raised for first time on appeal, § 121, p. 164 n.
not imputed until knowledge of fraud, § 121, p. 164.
not available against bona fide purchaser, § 121, p. 164 n.
based on changed conditions, § 121, p. 165.
addressed to sound discretion of court, § 121, p. 166.

LANDLORD—
entitled to priority, when, § 419, p. 387.

LEGATEES—
when necessary parties, § 60, p. 79.
may file cross bill, when, § 115, p. 149.

LEGACY—
when reached in equity, § 321, p. 290.
may be reached in equity when it is subject to demand, § 321, p. 291.

LEGAL PROCESS—
inadequacy as to equitable intent, § 48, p. 72 n.

LEGAL PROCEEDING—
levy, sale, and ejectment, § 7, p. 15.

LEGAL REMEDY—
when exhausted, § 13, p. 24.

LEGAL TITLE—
equity has jurisdiction when, § 36, p. 59 n.

LEVY—
restrain by bankrupt court, § 405, p. 352.

LIABILITY OF STOCKHOLDERS—
how enforced, § 4, p. 12.

LIABILITY OF CORPORATE OFFICERS—
proceedings for § 4, p. 12.

LIABILITY OF RECEIVER—
when, § 371, p. 327.

LIEN OF CREDITORS' EQUITABLE PROCEEDINGS—
of creditors' bill general, § 220, p. 234.
effect of as to creditors, § 220, p. 234.
effect of, § 221, p. 236.
extent of, § 222, p. 238.
only applies to property held by debtor at the time, § 222, p. 239.
when it commences, § 220, p. 235 n.
dates from what time, § 224, p. 240.
equitable how obtained, § 25, p. 49.
of creditors' bill as to real estate, § 221, p. 237.
priority of as between joint plaintiffs, § 223, p. 240.
no priority as to other creditors, when, § 222, p. 239.
not affected by sale under subsequent bill, § 221, p. 237.
does not embrace property liable to execution, § 222, p. 238.
superior to subsequent attachment, § 221, p. 238.
made effective through possession of receiver, § 220, p. 235.
prevents assignment of, § 221, p. 236.
effect as to property in wife's name, § 221, p. 237.
not lost by judgment becoming dormant, § 221, p. 237.
effect of as to purchasers pendente lite, § 221, p. 237.
not affected by sale under execution, § 221, p. 237.
superior to subsequent judgment, § 221, p. 236.
as to rents accruing, § 221, p. 236.
not affected by bankruptcy, when, § 162, p. 189.

LIEN OF CREDITORS' EQUITABLE PROCEEDINGS—Continued.
effect of by debtor's bankruptcy, § 221, p. 236.
where no injunction issues, § 221, p. 236.
as to mortgage prior to judgment, § 222, p. 239.
as to fraudulent conveyance after judgment, § 222, p.239.
as to property in hands of receiver, § 222, p. 239.
not affected by death of debtor, § 220, p. 234.
does not abate by death of judgment debtor, § 224, p. 240.
on subsequently acquired property how acquired, § 224, p. 241.
a lien may be obtained on a debt due by the debtor, § 171, p. 205
choses in action and equitable assets, § 220, p. 234.
receiver appointed to preserve, § 361, p. 318 n.
none acquired on trust property, when, § 287, p. 288.
As Basis of Suit—
not prerequisites to creditors' bill, § 25, p. 49, § 14, p. 26.
must be existing as basis of suit, § 17, p. 38, § 17, p. 45, § 162, p. 188.
Of Creditor—
how acquired, § 4, p. 12 n.
enforced in State court, when, § 406, p. 353.
secured in State court void as to bankrupt act, § 403, p. 352.
required as basis of creditors' bill, § 42, p. 66; § 157, p. 183.
judgment need not be when conveyance made, § 242, p. 250.
equity will protect, § 46, p. 70.
in supp. proc. generally, § 225, p. 241.

LIENS ON REAL ESTATE—
when enforced, § 37, p. 60.

LIEN, FRAUDULENT—
impeached by creditors, § 8, p. 16 n.

LIEN OF LANDLORD—
effect of bankruptcy on, § 414, p. 368.

LIEN BY PARTIES—
created by the parties not disturbed in equity, § 241, p. 249.

LIENS IN RELATION TO BANKRUPTCY—
power of bankrupt court over, § 414, p. 368.
how affected by bankruptcy, § 414, p. 360.
of creditors' bill, effect of bankruptcy on, § 414, p. 365.

LIEN ATTACHMENT—
foundation for creditors' bill, § 167, p. 198.

LIFE ESTATE—
may be sold on application of creditors, § 285, p. 274 n.
income from subject to creditors' bill, § 16, p. 33.

LIFE INSURANCE—
money due on policy subject to creditors' bill, § 16, p. 34.
LIMITATIONS—
not a defense to creditors' bill, when, § 120, p. 163.
applies to both legal and equitable actions, § 120, p. 163.
when a bar at law is a bar in equity, § 39, p. 62.
is a personal defense and optional, § 120, p. 164.
failure to plead judgment not void, § 8, p. 17 n.
LIS PENDENS—
purpose of doctrine of, § 140, p. 140.
when commences to operate, § 108, p. 140.
effect of as to real estate, § 221, p. 237.
effect of as to parties not before court, § 324, p. 294.
property must be described, § 108, p. 140.
affects only property in litigation, § 108, p. 140.

M

MARRIED WOMEN—
estate of subject to creditors' bill, § 16, p. 34.
money of husband deposited in wife's name subject to, § 16, p. 36.
notes turned over to wife of partner of insolvent firm subject to creditors' bill, § 16, p. 34.
land purchased by wife with husband's money subject to creditors' bill, § 16, p. 33.
when protected as to husband's creditors, § 12, p. 22.
earnings of not liable when, § 8, p. 16 n.
MASTER IN CHANCERY—
may maintain bill when, § 84, p. 110.
MISAPPROPRIATION—
by officers of corporation, § 4, p. 12.
MORTGAGE FRAUDULENT—
what is, § 4, p. 9.
colorable only is void, § 8, p. 16.
MORTGAGE FORECLOSURE—
impeached by judgment creditor, § 8, p. 16 n.
holder of not barred of creditors' suit, § 21, p. 47.
suit to set aside allegations in, § 103, p. 138.
MORTGAGE, VALIDITY OF—
how attacked by judgment creditor, § 8, p. 17 n.
MORTGAGE—
validity of after assignment, § 8, p. 17 n.
voluntary assignment of when void, § 12, p. 21 n.
effect of bankruptcy on, § 414, p. 366.
effect of bankrupt act on, § 415, p. 369.

MORTGAGEE—
not necessary party when, § 67, p. 91.
cannot sustain without surrender of security, § 16, p. 37.
fraudulent may be joined with fraudulent grantee, § 74, p. 104.
not entitled to be plaintiff when, § 68, p. 93.
MULTIPLICITY OF SUITS—
to prevent two or more may join, § 60, p. 79.
prevented by joining several plaintiffs, § 72, p. 102.
how avoided, § 13, p. 24.
MUNICIPAL CORPORATION—
not garnisheed, § 16, p. 31.

N

NECESSARY PARTIES—
who are, § 60, p. 79.
who are as defendants, § 89, p. 114.
fraudulent grantor when, § 89, p. 115.
fraudulent grantee when, § 89, p. 115.
all persons having interest in property or fund, § 89, p. 115.
person in possession when, § 89, p. 115.
corporation when, § 89, p. 116.
judgment debtor when, § 89, p. 114.
personal representative when not, § 89, p. 116.
may be non-residents, § 61, p. 79.
holders of legal title or equitable interest, § 61, p. 80 n.
absence of must be averred, § 64, p. 84.
nonjoinder is error, § 63, p. 82 n.
NEGLIGENCE OF OFFICERS—
relief against, § 4, p. 12.
NON-RESIDENT—
jurisdiction over when, § 36, p. 58.
assignment by may be attacked, § 167, p. 194.
NOTICE—
circumstances when, § 26, p. 50.
what sufficient, § 100, p. 125 n.
facts and circumstances impute, § 100, p. 124.
to vendee effect of, § 26, p. 50.
constructive applied in America, § 100, p. 125 n.
facts sufficient to put on enquiry sufficient, § 100, p. 125.

O

OFFICERS OF COURT—
may maintain bill when, § 84, p. 110.
OFFICERS OF CORPORATIONS—
proceedings against, § 4, p. 12.

OFFICERS, NEGLIGENCE OF—
relief against, § 4, p. 12.

OMNIBUS BILL—
what is, § 4, p. 10.

ORDER TO PROVE DEBTS—
who are included by, § 69, p. 98 n.

OWNER OF LIFE ESTATE—
necessary party when, § 65, p. 86.

P

PARTIES—
Necessary Parties—
necessary parties, § 61, p. 79.
general rules as to, § 60, p. 78.
are not affected by decree, § 65, p. 89.
reason for omission of necessary parties must be averred, § 64, p. 84 n.
disclosed by answer must be, § 61, p. 80 n.
who are necessary parties, § 61, p. 80; § 62, p. 80.
difficulty of determining necessary, § 60, p. 78.
fraudulent grantor and grantee necessary, § 62, p. 81.
grantees in several conveyances, § 62, p. 82.
all parties interested in or claiming interest in must be, § 60, p. 79.
all parties in interest must be, § 61, p. 79.
all persons having interest in property or fund, § 89, p. 115.
absence of must be averred, § 64, p. 84.
judgment debtor in suit to determine who may collect judgment, § 65, p. 85.
judgment debtor in suit between creditor and mortgagee, § 65, p. 85.
non-resident heirs when necessary, § 324, p. 294.
tenant by courtesy necessary, § 65, p. 88.
debtor of debtor when, § 65, p. 85.
all joint judgment debtors are necessary, § 64, p. 83.
corporation necessary, § 63, p. 82.
one holding legal title necessary, § 62, p. 81.
assignor and assignee necessary, § 62, p. 81.
claimants are necessary—may oppose each other, § 61, p. 80 n.
executor or administrator must be, when, § 60, p. 74.
non-residents must be when necessary, § 61, p. 79.
cestui que trusts, when, § 67, p. 91 n.
trustee when, § 67, p. 91 n.
heirs in suit to set aside deed of ancestor, § 65, p. 85.
codefendants with deceased judgment debtor, § 65, p. 86.

PARTIES—Continued.
assignee in proceeding to impeach assignment, § 65, p. 86.
owner of life estate, when, § 65, p. 86.
wife when, § 65, p. 86.
mortgage and judgment creditors when, § 65, p. 86.
creditors in suit to reach fund in hands of trustee, § 65, p. 88.
creditors in suit to enforce assignment, § 65, p. 87.
obligors are bound, when, § 65, p. 87.
participants in fraud, § 65, p. 87.
assignee (trustee) in bankruptcy, § 65, p. 88.
assignee of grantee, § 65, p. 89.
purchaser of grantee, § 65, p. 89.
all parties in interest exception to rule, § 61, p. 80 n.
Parties Not Necessary—
when not necessary, § 67, p. 91.
purchasers when not necessary, § 67, p. 91 n.
assignor of chose in action not necessary, § 67, p. 91.
creditors not necessary when assignee party, § 67, p. 91.
personal representatives when not, § 89, p. 116.
joint debtors when omitted as parties, § 64 p. 84.
stockholders not necessary in proceeding to dissolve, § 63, p. 82.
all stockholders need not be, § 63, p. 82.
vendor when not necessary, § 62, p. 81.
grantor when not necessary, § 62, p. 81.
judgment creditors not necessary defendants, § 65, p. 87.
president of bank, when, § 67, p. 92.
partner when, § 67, p. 92.
customers of bank, when, § 67, p. 92.
cestuis que trust, § 67, p. 93.
prior mortgagees in action to set aside deeds, § 67, p. 91 n.
distributees in suit against administrator, § 67, p. 93.
corporation in suit by receiver, when, § 67, p. 93.
administrator when, § 67, p. 92.
personal representatives, when, § 67, p. 92.
mortgagee when, § 67, p. 91.
all stockholders not necessary in suit for illegal dividends, § 69, p. 98.
Plaintiffs—
who may file bill, assignee, purchaser, etc., § 88, p. 113; § 69, p. 96.
when plaintiff not bound by judgment against him, § 80, p. 107.
general rule plaintiff must be judgment creditor, § 60, p. 79; § 68, p. 93.
general rule plaintiff must be free from fraud himself, § 60, p. 79.

PARTIES—Continued.
injury to plaintiff must appear, § 60, p. 79.
plaintiff must be bona fide creditor, § 60, p. 79; § 68, p. 93; § 103, p. 133.
plaintiff must show an injury, § 60, p. 79.
must not have participated in the fraud, § 60, p. 79.
attaching creditor may be, § 68, p. 94.
mechanics' liens may be, § 68, p. 93 n.
surety may be when, § 68, p. 95.
assignee of judgment may be, § 68, p. 95.
creditor may be when administrator refuses, § 68, p. 95.
may be single creditor when, § 69, p. 95.
administrator de bonis non may be, § 68, p. 95.
Joinder of Plaintiffs—
plaintiffs, two or more may join, § 60, p. 79; § 72, p. 102 n; § 72, p. 163.
bill by two not demurrable, § 72, p. 103 n.
may be in behalf of others who may come in, § 69, p. 97.
joining must be judgment creditors, § 72, p. 102.
when not joined as plaintiffs, § 75, p. 105 n.
Defendants—
all parties interested in subject matter, § 60, p. 79.
all interested parties must be, § 61, p. 79; § 65, p. 85.
on death of debtor, his heirs, executors, etc., must be, § 60, p. 79.
all parties participating in fraud must be defendants, § 60, p. 79.
judgment debtor must be defendant, § 60, p. 79.
several grantees may be defendants, § 89, p. 115.
maker and indorser of notes may be, § 89, p. 115.
several grantees may be defendants, § 89, p. 115.
judgment debtor must be defendant, § 60, p. 79.
judgment debtor in suit by receiver, § 64, p. 84 n.
who may be defendants, § 74, p. 104.
who must be joined as, § 61, p. 80 n.
interest may be legal or equitable, § 61, p. 80 n.
who may be joined as, § 61, p. 80 n.
all parties interested in fund, § 61, p. 80 n.
joint debtor properly defendant, though no judgment, § 65, p. 88.
When Suit for All Creditors—
by general creditor bill must be for all, § 77, p. 106 n.
proceedings against administrators must be for all, § 78, p. 107.
in case of assignment voluntary or by operation of law, § 70, p. 79.

PARTIES—Continued.
proceedings in assignment for all creditors, § 78, p. 107.
suit against corporation must be for all, § 69, p. 97; § 69, p. 98.
suit to recover stock liability must be for all, § 68, p. 98 n; § 70, p. 99.
under deed of trust for benefit of creditors' suit for all, § 69, p. 98 n.
if trust fund is to be reached suit must be for all, § 69, p. 97.
when fund in court for distribution, § 70, p. 99.
where one may sue for all, creditors or legatees, § 61, p. 80 n.
suit for all falls with payment of plaintiff, § 69, p. 98.
against administrators to administer estate, § 70, p. 99.
when bill will be treated as for all, § 77, p. 106.
if filed in behalf others they must have common interest, § 69, p. 97.
may be made parties when, § 25, p. 49.
one party may contest claim of another, § 61, p. 80 n.
proof of claims binds party, § 79, p. 107.
Want of Parties—
course if taken advantage of by demurrer or answer, § 29, p. 54.
not raised on hearing, when, § 66, p. 89.
taken advantage of by plea or answer, § 66, p. 89.
raised by the court, when, § 66, p. 90 n.
how and when raised, § 66, p. 89.

PARENT AND CHILD—
conveyance between when valid, § 12, p. 22 n.
generosity to in its relation to creditors, § 10, p. 20.

PARTNER—
non-resident estate of reached, § 67, p. 92 n.
may recover from deceased partner's estate, when, § 43, p. 67.

PARTNERSHIP—
funds of misapplied reached in equity, § 43, p. 67.
each partner's interest subject to creditors' bill under joint execution, § 16, p. 34 n.
executors of deceased partner may be partners, § 16, p. 34 n.
equitable relief for transfer of property to member, § 16, p. 30.
secretion of property ground of equitable jurisdiction, § 16, p. 30.
partner's interest in firm reached by creditors' bill, when, § 16, p. 34.
insolvency of surviving partner necessary, when, § 103, p. 138.
assignment by one partner void, when, § 8, p. 18 n.
priority between creditors of, § 239, p. 247.
partnership property to be exhausted first, § 170, p. 205 n.

PARTNERSHIP—Continued.
receiver in, § 359, p. 317.
power of receiver in, § 366, p. 322.
fraudulent conveyances of members attacked by firm creditors, § 100, p. 126.
heirs of necessary allegations, § 103, p. 138.

PARTICIPATION IN PROCEEDS—
who may, § 76, p. 106.

PAROL EVIDENCE—
may establish fraud, § 103, p. 129 n.

PATENT RIGHT—
may be reached by creditors' bill, § 16, p. 32.
not subject to creditors' bill, § 17, p. 41.

PAYMENT—
just before assignment, effect of, § 8, p. 18 n.

PENSION—
may be reached by creditors' bill when, § 17, p. 43 n.
not subject to creditors' bill, § 17, p. 43 n.

PENDENCY OF SUIT—
not bar to another suit, when, § 19, p. 46.

PERSONAL PROPERTY—
concurrent jurisdiction in fraudulent alienation of, § 39, p. 62.
fraudulent sales of, § 300, p. 282.
vendee not in possession not liable, § 16, p. 28.
if suit to reach execution must issue, § 156, p. 182.

PERSONAL ESTATE—
not followed if administrator and sureties responsible, § 324, p. 295.

PERSONAL DECREE—
against grantee, when, § 117, p. 152.
when rendered and against whom, § 117, p. 157.
not rendered against debtor when discharged in bankruptcy, § 119, p. 163.

PERSONAL INJURY—
verdict for not subject to creditors' bill before judgment, § 17, p. 45.

PERSONAL REPRESENTATIVES—
may sue, when, § 85, p. 110.
when not necessary parties, § 89, p. 116.

PETITION—
general nature of, § 100, p. 122.
scope of, § 100, p. 122.
must allege jurisdictional facts, § 42, p. 66.
prayer of, § 106, p. 139.

PLAINTIFF—
must have judgment, § 60, p. 79; § 68, p. 93.
must have judgment to sue corporation, § 29, p. 55.
must have judgment, exception to rule, § 68, p. 93.
judgment creditor in tort may be, § 68, p. 93 n.
attaching creditor may be, § 68, p. 94.
who has proved debt in probate may maintain bill, § 167, p. 193 n.
mechanic's lienor may be, § 67, p. 93 n.
must not have participated in the fraud, § 60, p. 79.
must be free from fraud, § 103, p. 133.
must be bona fide creditor, § 68, p. 93.
must be creditor in good faith, § 60, p. 79.
priority of in equity, § 25, p. 49.
entitled priority as against fraudulent grantee, § 117, p. 158.
general creditor cannot join with judgment creditor, § 159, p. 186.
right of to control litigation, § 107, p. 140.
who may be joined with fraudulent grantee, § 74, p. 104.
when not bound by judgment against him, § 80, p. 107.
state may be, § 88, p. 114.
who may not join, § 75, p. 105.
mortgagee not entitled to sue when, § 68, p. 93.
assignee of judgment may be, § 68, p. 95.
surety may be when, § 68, p. 94.
may maintain bill against co-surety, § 68, p. 95.
who may be co-plaintiffs, § 69, p. 95.
simple contract creditors cannot join with judgment creditors, § 69, p. 96 n.
entitled to solicitor's fees when, § 117, p. 160.

PLEA—
want of parties raised by, § 66, p. 89.

PLEADING—
object of, § 102, p. 128.
general nature of, p. 121.
parties, difficulty of determining, § 60, p. 78.
bill must show jurisdiction in equity, § 42, p. 66.

PLEDGE—
jurisdiction fraudulent, § 39, p. 62.
effect of bankruptcy on § 414, p. 368.

POWER OF RECEIVER—
source of, § 364, p. 320.
to sue, § 368, p. 324.

POWER OF RECEIVER—Continued.
in fraudulent conveyances, § 365, p. 320.
no power to attack judgment when, § 367, p. 323.
to attack fraudulent confession of judgment, § 366, p. 322.
to set aside fraudulent sale of personalty, § 366, p. 323.
no power to annul contracts when, § 367, p. 323.
to avoid assignment of choses in action, § 366, p. 322.
to avoid mortgage, § 366, p. 322.
in partnership matters, § 366, p. 322.
co-extensive only with court, § 366, p. 323.
limited notice of, § 366, p. 323.
if foreign, § 367, p. 323.
miscellaneous, § 366, p. 321.
under N. Y. Stat., 1894, § 366, p. 322.
POSSESSION—
of receiver not disturbed, § 373, p. 329.
POWER OF COURT—
may apply property to satisfy plaintiff's judgment, § 22, p. 47.
PRAYER OF BILL—
specific relief desired, § 106, p. 139.
alternative relief asked when, § 106, p. 139.
under general what recovered, § 23, p. 47 n.
PREFERENCES—
defined, § 260, p. 256.
general rule allowed, § 260, p. 255.
protected in equity, § 25, p. 50; § 46, p. 69.
how made—payment—security, etc., § 261, p. 258.
must not be in violation of agreement, § 261, p. 257.
prohibited by statute, § 262, p. 258.
statute applies only to assignments, § 267, p. 264 n.
statute applies to domestic preferences, § 267, p. 264.
prohibited by statute construction of in Dakota, § 267, p. 264 n.
none in distribution of lunatic's estate, § 324, p. 295.
attitude of preferred creditor, § 262, p. 259; § 263, p. 259.
taking judgment notes not preference when, § 268, p. 266.
prohibited by bankrupt and insolvent laws, § 260, p. 256.
under bankrupt act of 1898, § 267, p. 264 n; § 419, p. 385.
When Valid.
when in good faith and ordinary course of business, § 264, p. 260.
sustained in absence of statute, § 264, p. 260.
when made to trustees, etc., § 264, p. 261.
when valuation reasonable, § 264, p. 261.
when placed in hands of attorney for distribution, § 264, p. 261.
when to pay creditor and others, § 264, p. 261.

PREFERENCES—Continued.
money loaned by father to son when, § 264, p. 261.
mortgage to secure bona fide debt, § 264, p. 262.
in New York when, § 269, p. 267.
When Invalid.
where fund sought is a trust fund, § 167, p. 197.
stipulations in assignments as to preferences void, § 269, p. 267.
secret agreement to pay in full, § 268, p. 266.
by judgment—what must appear, § 267, p. 265.
judgment confessed when, § 268; p. 265.
several judgments confessed preferential when, § 268, p. 266.
if all debtor's property mortgaged, § 266, p. 263.
if to hinder and delay other creditors, § 266, p. 263.
if designed to assist debtor in covering up property, § 261, p. 256.
where property disproportionate in value, § 266, p. 263.
if with view of insolvent proceedings, § 266, p. 263.
when given for fraudulent purpose, § 266, p. 263.
void if made in anticipation of statute, § 262, p. 263.
when part of indebtedness not bona fide, § 261, p. 257.
if claim secured not bona fide, § 261, p. 257.
with reservations invalid, § 261, p. 256.
invalid burden of proof, § 267, p. 265.

PRESUMPTION—
of insolvency when, § 103, p. 136.
execution when presumed to be regular, § 103, p. 135.
creditor not presumed to know laws of foreign state, § 8, p. 19 n.
not presumed that debt existed when conveyance made, § 103, p. 136.

PRIORITY—
definition of, § 235, p. 242.
secured by creditor when, § 8, p. 19.
in equity proceedings, § 25, p. 49.
general rule as to, § 236, p. 243.
reason for rule, § 238, p. 245.
secured by diligence protected, § 240, p. 248.
subject to existing liens, § 25, p. 49.
is purely an equitable question, § 239, p. 248.
as between several plaintiffs and general creditors, § 236, p. 244.
maturity of claim does not give, § 236, p. 244.
based on legal or equitable lien, § 236, p. 224.
not based on priority of judgment, § 238, p. 246.
creditor's bill does not give in case of corporations, § 29, p. 55.
plaintiff entitled as against fraudulent grantee, § 117, p. 158.
not questioned by fraudulent grantee, § 243, p. 251.

PRIORITY—Continued.
grantee not interested in, § 117, p. 152.
among creditors generally, § 235, p. 242.
distinguished from preference, § 235, p. 242.
where bill filed for all, § 239, p. 247.
may be waived by filing bill for all, § 237, p. 245.
not secured in violation of agreement, § 247, p. 253.
under bankrupt act, § 419, p. 387.
may be obtained under creditor's bill in Alabama, § 76, p. 106 n.
none where bill filed in behalf of all, § 239, p. 247.
secured by filing bill must be in good faith, § 239, p. 247.
if to defeat or delay other creditors will not be sustained, § 239, p. 247.
as between individual and partnership creditors, § 239, p. 247.
in relation to other liens, § 240, p. 248.
not given over other creditors when, § 222, p. 239.
given by law not disturbed in equity, § 240, p. 249.
over foreign creditors, § 241, p. 249.
supplemental proceedings same as under creditors' bills, § 244, p. 251.
effects of discontinuance of assignment, § 245, p. 251.
none where statute places all on equal footing, § 246, p. 252.
in dealing with fraudulent grantee, § 248, p. 253.

PRINCIPAL—
suit against by surety when, § 103, p. 136.

PROBATE COURT—
exclusive jurisdiction when, § 43, p. 67.
jurisdiction in equity when, § 43, p. 67.

PROBATE JUDGE—
may not file creditor's bill, § 88, p. 114.

PROBATE OF CLAIM—
sufficient where debtor is dead, § 14, p. 26.

PROCEEDINGS IN AID—
distinguished from creditor's bill, § 4, p. 10.
usually in original action, § 4, p. 11.

PROMISSORY NOTE—
of resident partner to non-resident not subject, § 17, p. 42.

PROOF OF CLAIM—
made at any time before distribution, § 70, p. 100 n.
must correspond with allegations, § 103, p. 136.
binds party so doing, § 79, p. 107.

PROPERTY—
insignificant value no basis of, § 6, p. 14.

PUBLIC POLICY—
governs jus disponendi, § 8, p. 16.
its relation to rights of creditors, § 10, p. 20.

PURCHASER—
of grantee necessary party, § 65, p. 89.
when not necessary party, § 67, p. 91 n.
under fraudulent judgment, liability of, § 117, p. 157.
money paid by debtor may be recovered, § 23, p. 47.
with notice takes subject to rights of creditors, § 15, p. 26.
may file creditor's bill, § 88, p. 113.
of fraudulent vendee, rights of, § 312, p. 288.
pendente lite, subject to lien of creditor's bill, § 221, p. 237.
fraudulent grantee cannot defeat, § 16, p. 28 n.
on fraudulent representation void, § 16, p. 27.

R

RECEIVER—
Jurisdiction.
statutory not exclusive, § 353, p. 311.
power to appoint unquestioned, § 351, p. 307.
power of court over, § 385, p. 339.
by what court appointed, § 354, p 312 n.
appointed by commissioner in Wis., § 209, p. 331 n.
Appointment of, § 361, p. 318.
appointment of general, § 350, p. 306.
appointment in discretion of court, § 350, p. 307; § 351, p. 307.
effect of appointment as to lien of creditor's bill, § 221, p. 238.
under English Judicature Act, § 352, p. 310.
Basis of Appointment.
under what circumstances appointed, § 354, p. 311.
grounds for appointment depend on each case, § 350, p. 307.
sometimes depends on amount involved, § 351, p. 308.
must be assets to be applied, § 352, p. 309.
refused if property may be brought into court, § 351, p. 308.
must be danger of loss, § 352, p. 309; § 352, p. 311.
application must be to proper court, § 352, p. 310.
property must be within jurisdiction, § 352, p. 310.
when a matter of right, § 352, p. 311.
answer that debtor has no property not sufficient, § 354, p. 312 n.
general creditor not entitled to, § 27, p. 51.
not on application of general creditor, § 351, p. 308.
necessity for depends on allegations, § 350, p. 307.
appeal from order appointing, § 363, p. 319.
Prerequisites to Appointment.
prerequisites to, § 352, p. 309.
must be actual bona fide indebtedness, § 352, p. 309.
legal remedies must be exhausted, § 352, p. 309.
for corporation four prerequisites required, § 352, p. 309.

RECEIVER—Continued.
Appointment in particular cases.
in the administration of an estate, § 354, p. 312.
where necessary to preserve property, § 354, p. 312.
where assignee under assignment insolvent, § 354, p. 312.
where assignment to hinder, etc., creditors, § 354, p. 313.
where sought to reach debtor's interest in deceased partner's estate, § 354, p. 313.
in assignments, § 357, p. 314.
in assignments when valid, § 354, p. 313.
in assignments fraudulent, § 354, p. 313.
in actions to rescind for fraud, § 355, p. 313.
in attachment proceedings, § 356, p. 314.
may be for foreign corporations, § 352, p. 310.
corporation, grounds of, § 357, p. 315.
of insolvent corporation proper when, § 63, p. 83 n.
in case of fraudulent transfers, § 358, p. 315.
in case of fraudulent conveyances, § 358, p. 316.
to impeach fraudulent conveyances, § 360, p. 317.
in case of fraudulent incumbrance, § 358, p. 316.
in building and loan cases, § 363, p. 319.
in supplemental proceedings, § 201, p. 224; § 209, p. 231; § 360, p. 317.
in supplementary proceedings represents creditors, § 360, p. 317.
title in supp. proc., none to property fraudulently conveyed, § 211, p. 232.
power of in supplemental proceedings, § 210, p. 231.
in partnership matters, § 359, p. 317.
in bankruptcy matters, § 386, p. 344.
in state court procedure against by bankrupt court, § 404, p. 352.
not where legal title involved, § 354, p. 313.
Power of receiver.
power of, § 364, p. 320.
power of general, § 367, p. 323.
in supplemental proceedings, § 366, p. 322.
in fraudulent conveyances, § 365, p. 320.
to avoid mortgages, § 366, p. 321.
suit may be maintained when, § 81, p. 109.
may file creditor's bill, § 88, p. 113.
power to make assessments, § 29, p. 54.
power to sue, § 368, p. 324.
suit by in U. S. court no limitation on amount, § 40, p. 64 n.
power to sue in foreign jurisdiction, § 210, p. 231.
in foreign jurisdiction, § 369, p. 325.
miscellaneous, § 366, p. 321.

RECEIVER—Continued.
no power to collect statutory liability, § 29, p. 35.
no power to recover debts due in foreign state, § 17, p. 43.
when estopped by acts of creditors, § 210, p. 232.
limited by acts of creditors when, § 210, p. 232.
Possession of.
possession of, § 373, p. 329.
subject to all liens, § 354, p. 312 n.
right of recovery depends on debtor's right when, § 24, p. 47.
title of, § 372, p. 327.
to preserve lien of creditor's bill, § 360, p. 318.
liability of, § 371, p. 327.
suits against, § 370, p. 326.
expense of when allowed, § 383, p. 338.
distribution of funds of, § 387, p. 344.
Claims against.
when not preferred, § 382, p. 336.
when preference allowed, § 381, p. 335.
validity of, § 379, p. 333.
not allowed when, § 380, p. 334.
defenses to, § 376, p. 331.
when presented, § 378, p. 332.
claims against, allowance of, § 375, p. 330.

REFEREE—
power of in Iowa, § 206, p. 229.

RELIEF IN EQUITY—
in case of insolvent corporations, § 2, p. 6.

RENTS—
when apportioned, § 17, p. 46.

REPLEVIN SUITS—
pendency of no defense, § 113, p. 147.

RESIDENCE—
fraudulent conveyance, grantor and grantee, § 38, p. 61.

RES ADJUDICATA—
validity of judgment is, § 176, p. 214.
consideration of debt is on creditor's bill, § 103, p. 137.
defense at law is res adjudicata in equity, § 39, p. 62.

RESIDENT CREDITORS—
entitled to priority over non-resident, § 241, p. 250 n.

RESCISION OF CONTRACTS—
receiver in, § 355, p. 313.
for frauds, § 303, p. 284.
conditions of, § 304, p. 285.
conditions of—must be in reasonable time, § 306, p. 285.
re-assignment of notes and mortgage required, § 305, p. 285.
based on fraudulent representations, § 307, p. 286.

RESULTING TRUST—
rescinded contract not, § 310, p. 287.
reached in equity, § 288, p. 279.
RESTRICTIONS—
on estates in fee, § 286, p. 275.
RETURN OF EXECUTION—
must be before bill filed, § 172, p. 210.
must be to county from which it issued, § 172, p. 210.
irregular may be amended, § 172, p. 210.
requisites of, § 172, p. 209.
by order of plaintiff's attorney, § 172, pp. 209, 204.
admitted, must be overcome, § 172, p. 211.
no uniform rule as to formal parts, § 172, p. 211.
imports verity, but must be no collusion, § 172, p. 211.
must be on responsibility of sheriff, § 205, p. 227.
in supplementary proceedings, § 203, p. 226.
reason for requiring execution to run full period, § 172, p. 206.
execution must run full statutory period, § 172, p. 206.
within statutory period, § 172, p. 207.
when made, § 172, p. 206.
when sufficient, § 176, p. 205 n.
nulla bona basis for equitable proceeding, § 170, p. 204.
nulla bona, must not be mere formality, § 170, p. 205.
nulla bona, must be made where property not subject to levy, § 170, p. 204.
reason why execution need not rule full period, § 172, p. 207.
bona fide at any time gives jurisdiction, § 172, p. 208.
prima facie evidence when, § 172, p. 208.
general rule is necessary prerequisite, § 155, p. 176.
necessary in purely equitable proceedings, § 154, p. 176.
required to reach equitable assets, § 155, p. 177.
relief based on lien does not require return, § 156, p. 182.
need not be shown in haec verba, § 103, p. 131.
must be alleged, § 100, p. 123.
must show bona fide exhaustion of legal remedies, § 172, p. 208.
forms of, § 172, p. 211 n.
RIGHT OF ACTION—
for injury to property subject to creditor's bill when, § 17, p. 43 n.
for tort not subject to creditor's bill, § 17, p. 43 n.

S

SALARY—
when may be reached in equity, § 16, p. 31.
SALE—
confirmation of, § 117, p. 153.

SATISFIED JUDGMENT—
relief against, § 8, p. 18 n.
SECURITY—
of creditor not a bar to creditors' bill, § 21, p. 46.
of mortgagee must surrender when, § 68, p. 93.
SETTLEMENT—
by husband for wife when valid, § 12, p. 22 n.
SET OFF—
against debtor may be under creditors' bill, § 24, p. 47.
SHERIFF—
may not file creditors' bill, § 88, p. 114.
return of, prima facie evidence, when, § 172, p. 208.
SOLICITOR'S FEES—
when plaintiff entitled to, § 117, p. 160.
STATUTE—
13 Eliz., history of, § 5, p. 12.
purpose of, § 5, p. 13.
scope of, § 5, p. 13.
construction of, § 48, p. 72 n.
declaratory of common law, § 48, p. 72 n.
application to personalty, § 300, p. 282.
§ 38 of 2 N. Y. Rev. Stat. construed, § 12, p. 23 n.
Ky. Civ. Code, § 439 construed, § 13, p. 24.
Me. Rev. Stat. Ch. 76, § 13 construed, § 12, p. 23.
§ 3835 Rev. Stat. Wis. applied, § 12, p. 24.
Mo. Rev. Stat. 1889, § 571 construed, § 13, p. 25 n.
STATUTORY RESTRICTIONS—
on preference, construction of, § 267, p. 264.
STATUTORY PROCEEDING—
summary notice of, § 4, p. 16.
STATUTORY REMEDIES—
against insolvent corporations, § 29, p. 53.
STATUTE OF FRAUDS—
in relation to trusts, § 287, p. 277.
STATUTE OF LIMITATIONS—
effect in bankruptcy, § 421, p. 390.
STATE LAWS—
suspended when, by bankruptcy law, § 410, p. 354; § 412, p. 358.
STOCK. (Corporate.)—
in insolvent corporation—how reached, § 2, p. 7.
may be reached by creditors' bill, § 16, p. 32.
in corporation unpaid reached by creditors' bill, § 29, p. 53.
fraudulent transfer of, § 301, p. 283.
concurrent jurisdiction against, § 47, p. 71.

STOCK LIABILITY. (Corporate.)—
equity has power to assess, § 29, p. 54.
how enforced, § 4, p. 12.
liability of is general, § 63, p. 83.
right of creditor to collect, § 374, p. 330.
creditors need not litigate rights between stockholders, § 69, p. 98.
STOCKHOLDERS—
not necessary in proceeding to dissolve, § 63, p. 82.
generally should be made parties to creditors' suit, § 29, p. 54.
all need not be parties, § 63, p. 82.
insolvent need not be party, § 29, p. 54.
liability for fund illegally distributed, § 16, p. 31 n.
cannot question validity of judgment, § 176, p. 214.
subscription to stock collected by receiver, § 29, p. 54.
statutory not collected by receiver, § 29, p. 55.
SUBSEQUENT CREDITOR—
may file creditor's bill, § 88, p. 114.
may attack conveyance when, § 16, p. 27 n.
SUBSEQUENTLY ACQUIRED PROPERTY—
how reached, § 116, p. 149.
SUBROGATION—
assignee of judgment having paid same may file bill, § 87, p. 112.
SUIT BY RECEIVER—
limited when, § 210, p. 232.
SUIT AGAINST RECEIVER—
on what conditions allowed and when, § 370, p. 326.
SUIT BY THIRD PARTY—
against debtor may be fraudulent, § 28, p. 32.
SUIT PENDING—
between same parties no defense, § 113, p. 147.
SUPPLEMENTARY PROCEEDINGS—
summary, nature of, § 4, p. 10.
grounds of jurisdiction, § 44, p. 68 n.
jurisdiction, statute source of, § 39, p. 63.
nature of, § 202, p. 226 n.
are in lieu of creditors' bills, § 201, p. 224.
scope of coextensive with creditors' bills, § 211, p. 233.
distinguished from creditors' bill, § 4, p. 10.
nature of statutory, § 4, p. 10.
usually in original action, § 4, p. 11.
are ancillary in their nature, § 211, p. 232.
are supplemental to suit in which judgment rendered, § 201, p. 224.
defects in lack of parties, § 201, p. 224.
Examination of debtor—
must be in reasonable time, § 206, p. 230.

SUPPLEMENTARY PROCEEDINGS—Continued.
examination of debtor under, § 201, p. 224.
examination of debtor, § 205, p. 227.
scope of, § 206, p. 229.
Receiver in, § 201, p. 224; § 360, p. 318.
power of in supplemental proceedings, § 209, p. 331.
purpose of, § 209, p. 231.
depend on exhaustion of legal remedies, § 202, p. 225.
not a bar to suit in equity, § 201, p. 225 n.
court no jurisdiction to take possession summarily, § 201, p. 225.
when instituted with reference to return, § 203, p. 226.
husband not a competent witness, when, § 208, p. 230.
against foreign corporation, § 209, p. 231 n.
against foreign corporation, § 209, p. 331 n.
power of court to compel transfer, § 211, p. 233.
judgment for alimony enforced in, § 211, p. 233.
recognize same priorities as under creditors' bills, § 244, p. 251.
lien of, § 225, p. 241.
order for examination does not create lien, § 225, p. 241.
priority acquired by appointment of receiver, § 225, p. 241.
service of order takes place of filing creditors' bill.
effect of bankruptcy proceedings on, § 416, p. 376.

SUPPLEMENTAL PETITION—
purpose of, § 116, p. 149.
scope of, § 116, p. 149.

SUPPLEMENTAL BILL—
scope and purpose of, § 116, p. 149.
jurisdiction not conferred by, § 166, p. 191.
may be filed to reach subsequently acquired property, § 17, p. 43 n; § 116, p. 149.

SURPLUS—
on mortgage foreclosure reached by creditors' bill, § 16, p. 33.
when creditors participate in, § 81, p. 108.

SURETY—
may maintain creditors' bill against principal, § 103, p. 136.
may maintain suit against co-surety, when, § 68, p. 95.
may file creditors' bill, § 88, p. 113.
order of proceeding against and joint tenants, § 185, p. 220.
bill against maintained, when, § 324, p. 295.

SURVIVING PARTNER—
may reach misapplied funds, § 43, p. 67.

T

TAX—
may be basis of creditors' bill, § 18, p. 46.

TENANTS IN COMMON—
jurisdiction, property in foreign country, § 36, p. 59 n.

TENDER—
as preliminary to recision, § 304, p. 285.
THREATS—
agreement procured by not enforcible, § 186, p. 220.
TITLE OF RECEIVER—
notice of, § 372, p. 327.
TORT—
judgment in basis of creditors' bill, § 184, p. 219.
TRIAL BY JURY—
mortgagee cannot raise defense, § 13, p. 25.
debtor can waive, § 13, p. 25.
TRUSTS—
when equitable assets are, § 25, p. 50.
jurisdiction of equity in, § 36, p. 60 n.
no legal remedy in, § 167, p. 199 n.
as ground for jurisdiction, § 44, p. 68.
jurisdiction of equity, § 45, p. 69.
when equity will not relieve against, § 45, p. 69; § 45, p. 69 n.
difference between created by debtor and third person, § 287, p. 276.
may be reached by creditors' bill, § 16, p. 32 n.
TRUST ESTATE—
not subject to creditors' bill, when, § 16, p. 33 n.
TRUST FUND—
what is in case of corporation, § 69, p. 97.
assets of insolvent corporation, § 2, p. 6; § 24, p. 52.
when secured gives plaintiff no priority, when, § 8, p. 19 n.
reached without judgments and execution, § 167, p. 197.
unpaid capital stock is when corporation insolvent, § 155, p. 179 n.
for benefit of all creditors not appropriated by one, § 17, p. 38.
when subject to creditors' bill, § 16, p. 35.
TRUST PROPERTY—
may be real or personal, § 285, p. 275.
statutory provisions, § 281, p. 269.
rights of creditors to generally, § 280, p. 268.
subject to creditors' bill, when, § 17, p. 42 n.
right of donor to dispose of property, § 282, p. 270.
resulting trust, § 288, p. 279.
if mixed with other funds whole liable, § 289, p. 280.
if conveyed or converted may be followed, § 289, p. 280.
When Reached by Creditors—
may be reached by creditors, § 285, p. 273.
money payable on demand may be reached by creditors, § 273, p. 272.
subject to rights of creditors, when, § 288, p. 278.
right of creditors to surplus, when, § 288, p. 278.

TRUST PROPERTY—Continued.
if conveyed to pay debts is, § 288, p. 278.
whether reached by creditors or not, § 283, p. 271.
property in trust for creditors reached without judgment, § 167, p. 197.
debtor must not participate in placing in trust, § 282, p. 270.
When Not Reached by Creditors—
general rule such property not reached by creditors, § 284, p. 272.
when not reached—test of rule, § 284, p. 273 n.
in foreign state, not subject to court of equity, § 291, p. 281.
inalienable by will not subject to creditors' bill, § 17, p. 42.
When Liable for Debts—
money in hands of attorney when, § 288, p. 280.
money in hands of executor due on demand, § 288, p. 280.
devisee's share in equitable remainder not, § 288, p. 280.
pure trust, when, § 288, p. 280.
annuity that is due, § 288, p. 279.
surplus income of express trust, § 288, p. 279.
life estate if fraudulently conveyed, § 288, p. 279.
when it is alienable, § 288, p. 279.
land purchased by heirs is, when, § 288, p. 278.
public policy in regard to, § 282, p. 270.
rule in New York, New Jersey, etc., § 281, p. 269.
rule in England in regard to, § 282, p. 271 n.
rule of U. S. Sup. Court, § 282, p. 271 n.
rule in Illinois, § 282, p. 271 n.
rule in Massachusetts, § 282, p. 271 n.
when neither principal nor income liable, § 283, p. 271.
alimony not reached, § 288, p. 280.
jurisdiction in when property in foreign county, § 36, p. 58 n.
no lien on by creditors' proceeding, § 287, p. 278.
in its relations to statute of frauds, § 287, p. 277.
restrictions on estates in fee, § 286, p. 275.
provision in deed or will against alienation void, § 285, p. 275.
TRUSTEE—
when necessary party, § 67, p. 91 n.
in possession of property of a corporation may sue, § 29, p. 55.
TRUSTEE (BANKRUPTCY.)—
a party in State court, § 411, p. 357.
may set aside fraudulent conveyance where, § 40, p. 64.
TWYNE'S CASE—
construction of stat., 13 Eliz., § 300, p. 282.

U

UNITED STATES COURTS—
jurisdiction in, § 40, p. 63.

UNITED STATES COURTS—Continued.
over executors and administrators, § 40, p. 63 n.
in creditors' proceedings, § 40, p. 63.
in matters of fraudulent conveyance, § 407, p. 353.
in administration of insolvent corporation estate, § 40, p. 64 n.
citizenship when not jurisdictional, § 40, p. 64.
obtained by assignment to one of several judgments, § 40, p. 64 n.
have concurrent jurisdiction with state courts when, § 40, p. 64 n.
jurisdictional amount how determined, § 40, p. 64 n.
legal and equitable claims not blended in, § 152, p. 174.
practice in not affected by State legislation, § 152, p. 172.
enforce new equitable rights created by States, § 152, p. 173.
rule as to requiring judgment liberal, § 152, p. 172.

USURY—
recovered by creditor under statute, § 16, p. 36.

V

VALUABLE CONSIDERATION—
does not render transaction involving secret trust valid, § 16, p. 32 n.

VENDOR—
declarations of not evidence, § 26, p. 51.
when not necessary party.

VENDOR'S POSSESSION—
continued makes sale void, § 16, p. 28.

VENDEE—
fraud of, § 302, p. 283.
effect of notice, § 26, p. 50.
knowledge of may render transaction void, § 26, p. 50.
when party to fraud, § 26, p. 50 n.

VERIFICATION—
of bill, when necessary, § 105, p. 139.

VESTED REMAINDER—
subject to creditors' bill, § 16, p. 36.

VOID DECREE—
how may be attacked and when, § 117, p. 154.

VOID DEED—
reached by creditors' bill, § 16, p. 27 n.

VOID CONTRACT—
obtained on apparent ownership, § 16, p. 27.

VOID ASSIGNMENT—
partly void and partly good, § 8, p. 19 n.

VOLUNTARY CONVEYANCE—
allegations required to impeach, § 100, p. 123 n; § 100, p. 125.
necessary allegations in case of, § 103, p. 136.

VOLUNTARY CONVEYANCE—Continued.
relationship to be alleged, § 100, p. 126 n.
evidence required to avoid, § 12, p. 22 n.
burden of proof in, § 100, p. 126 n.
effect of gift in, § 103, p, 136.
void as to existing creditors, § 12, p. 21.
when suit maintained against heirs, § 12, p. 23.
property not reached by levy, § 12, p. 23.
property purchased on strength of ownership void, § 12, p. 23.
husband to wife void when, § 8, p. 16.
before indebtedness accrued not void, § 12, p. 22.
insolvency must result, § 100, p. 126 n.
subsequent insolvency of grantor not sufficient, § 100, p. 126 n.
not necessarily void as to creditors, § 12, p. 21.
voidable if attacked in reasonable time, § 12, p. 21.
when debt contracted not material, § 100, p. 123.
participation of grantee not to be shown, § 100, p. 124.
fraud of grantee need not be shown, § 100, p. 126 n.

W

WAIVER OF DEFENSE—
defendant may waive defense by not answering, § 113, p. 48.
failure to obtain judgment may be waived, § 167, p. 197.
of execution inferred when, § 169, p. 204.

WANT OF PARTIES—
taken advantage of by demurrer, § 66, p. 89.
not raised on hearing if formal, § 66, p. 89.
raised by court when, § 66, p. 90 n.
may be waived, § 66, p. 89 n.

WASTE—
jurisdiction in by tenant in common, § 36, p. 59 n.
not restrained on application of general creditor, § 165, p. 191.

WIFE OF DEBTOR—
may file creditors' bill, § 88, p. 113.
of debtor examined in supplemental proceedings, § 205, p. 228.

WITHHOLDING PROPERTY—
renders assignment void, § 8, p. 18.

KF 1526 S65

Author Smith, John Wilson. Vol.

Title The equitable remedies of ~~the~~ Copy
creditors